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Regime Retransmission of Distant Radio and Television Signals
Copyright Act, Section 70.63

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Statements of Royalties to be paid for the retransmission of distant radio and television signals in 1992, 1993 and 1994

Reasons for decision

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I. CHRONOLOGY ANDDESCRIPTION

A. THE HEARING

On June 30, 1991, nine collecting bodies (or collectives) filed, pursuant to section 70.61 of the *Copyright Act* (hereinafter, the "*Act*"), statements of proposed royalties for the retransmission of distant radio and television signals: the Border Broadcasters' Collective (BBC); the Canadian Broadcasters' Rights Agency Inc. (CBRA);[1] the Canadian Retransmission Collective (CRC); the Canadian Retransmission Right Association (CRRA); the Society of Composers, Authors and Music Publishers of Canada (SOCAN);[2] the Copyright Collective of Canada (CCC); the International Olympic Committee (IOC);[3] the Major League Baseball Collective of Canada, Inc. (MLB); and FWS Joint Sports Claimants Inc. (FWS). All submitted statements for works carried on distant television signals, and three, CBRA, CRRA and SOCAN, also submitted statements for works carried on distant radio signals.

The statements were published in the *Canada Gazette* of August 3, 1991. Objections were received from the Canadian Cable Television Association (CCTA) Canadian Satellite Communications Inc. (CANCOM), and Regional Cablesystems Inc. (Regional).[4]

On November 7, 1991, at the request of the parties, the Board made an interim decision. Its effect was to continue the 1990-91 tariff until the certification of a final tariff for 1992 and beyond.

The Board issued a directive on procedure. A hearing was held to review the databases prepared by CRRA and CCC. Two pre-hearing conferences were held to dispose of issues arising from interrogatories and to establish the order of presentation of the case. Parties completed their preliminary filings by March 3, 1992.

The hearing started on March 9, 1992 and occupied 36 days between then and July 9, 1992. The Board heard some 50 witnesses and received more than 350 documents.[5] As in the 1990-91 tariff hearings, the royalties to be paid for the retransmission of distant radio signals were not addressed. On October 19, 1992, SOCAN filed an agreement with the Board between the objectors and the collecting bodies representing owners of works carried on distant radio signals. The published tariff reflects the terms of the agreement.

The governments of British Columbia, Newfoundland and Labrador, Ontario, Nova Scotia and Quebec, the American Public Broadcasting Service (PBS) and the Canadian Film and Television Production Association asked for, and were granted, status as intervenors. Nova Scotia,

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[1] CBRA filed a proposal under its formername, Canadian Broadcasters' Retransmission Rights Agency Inc. The new name is used throughout this document.
[2] PROCAN and CAPAC, who participated in the 1990-91 tariff hearings, merged to form SOCAN.
[3] IOC had not participated in the 1990-91 tariff hearings.
[4] Regional succeeded C1 Cablesystems Inc., a participant in the 1990-91 tariff hearings.
[5] A list of witnesses appears in Appendix I.

Newfoundland and Labrador, Ontario, Quebec and PBS availed themselves of the opportunity to make written submissions. No intervenor asked to participate more actively in the proceedings.

Participants submitted their arguments in writing. All arguments, submissions, replies and other representations were filed by August 19, 1992. The Board invited further comment on the wording of the tariff, and especially on the administrative provisions. CCC provided a revised text for two possible versions of its tariff on August 25, 1992. The record was complete on September 9, 1992.

B. THE PARTIES TO THE HEARING

On the whole, the parties before the Board were the same as during the 1990-91 tariff hearings. IOC claimed to represent the interests of the International Olympic Committee in the royalties accruing from the retransmission of events at the Olympic Games. It presented no evidence and withdrew its statement of royalties on March 30, 1992. The few realignments alluded to earlier did not materially affect the interests represented, which were described at length in the Board's retransmission decision of October 2, 1990 (the 1990 decision).[6] In a nutshell, collectives represent program suppliers (CCC and CRC), broadcasters (CRRA, CBRA and BBC), major sports leagues (FWS and MLB) and music rights owners (SOCAN), while the objectors represent the range of retransmitters. The major difference in these proceedings was the greater participation and contribution of intervenors, especially Ontario and Quebec.

C. THE 1990-91 TARIFF HISTORY

On January 1, 1990, the *Canada-United States Free Trade Agreement Implementation Act* (FTA) imposed copyright liability for the retransmission of distant radio and television signals. The FTA also introduced a compulsory licensing scheme for these rights, and charged the Copyright Board with establishing the amount of royalties to be paid and allocating them among the collectives representing copyright owners.

Cabinet exercises several functions under the Canadian retransmission rights regime. Two of these concern the definition of distant signals and of small retransmission systems. Both powers were exercised before the Board embarked upon the 1990-91 tariff hearings.[7]

The tariff certified after these hearings had seven main features. Four affect the royalty rates, and three the allocation of royalties among collectives.

1. The tariff set a flat rate of $100 a year for small retransmission systems. Subsection 70.64(1) of the *Act* provides that these systems are entitled to a preferential rate. This approach was designed to recognize the intent of the *Act* and to minimize the administrative and economic impact of the tariff on small systems while offering a formal recognition of their obligation to pay for their use of programs on distant signals.

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[6] File 1989-1, decision, at pp. 13-15. *(pp. 11-13 in this volume)*

[7] See the *Local Signal and Distant Signal Regulations*, SOR/89-254, and the *Definition of Small Retransmission Systems Regulations*, SOR/89-255.

2. The rates did not depend on the number of distant signals retransmitted to each premises. The intent there was to equalize the liability of Canadian retransmitters irrespective of their ability to receive signals (Canadian or American) as local signals, and to simplify the administration of the tariff.
3. Systems other than small retransmission systems (the so-called large systems) serving no more than 6,000 premises paid rates between 20¢ and 65¢, while large systems serving more than 6,000 premises paid 70¢. The Board decided to scale in the tariff because "the special concerns of small systems do not suddenly disappear at the boundary between small and large systems."
4. Discounts were granted to reflect the reduced value of distant signals to certain types of premises (for example, hotel rooms).
5. Royalties for the use of music on programs retransmitted on distant signals were taken first from the total.
6. The remaining royalties were then divided into two pools based on the relative supply of distant American and Canadian signals. Within those pools, collectives were allocated a share equal to the viewing share that their works attracted. Adjustments were made for MLB since none of its programs were aired during the sample sweep weeks.
7. Each collective's entitlement was expressed as a fixed percentage of the royalties to be paid by each retransmitter.

Cabinet was asked to exercise its power under subsection 70.67(1) of the *Act* and vary the Board's decision on the manner of determining the royalties to be paid. On December 28, 1990, Cabinet announced that it opted not to do so; instead, the intention was stated to adopt criteria to which the Board would have to have regard in establishing a manner of determining fair and equitable royalties in future proceedings.

The 1990-91 tariff was also challenged on several grounds in the Federal Court of Appeal. All of these challenges were dismissed. The Board's legal interpretations were held to be correct; furthermore, in exercising its discretion on several aspects of evidence and policy, the Board was said not to have behaved in an unreasonable fashion.

On November 28, 1991, pursuant to s. 70.63(4) of the Act, the Governor in Council adopted the *Retransmission Royalties Criteria Regulations* (the Cabinet criteria).[8] The Board must have regard to these criteria in establishing the amount of royalties to be paid under the tariff. These criteria and their impact are reviewed in Section III.

D. THE TARIFF PROPOSALS OF THE PARTIES

The collectives filed nine separate television tariffs, all of which followed the essence of the structure of the 1990-91 tariff.[9] Apart from some requesting that superstation signals be treated separately, they all proposed a tariff based on the number of premises receiving at least one

[8] SOR/91-690, *Canada Gazette*, December 28, 1991.
[9] The tariff proposals filled 161 pages of the *Canada Gazette*, a number that could have been reduced, had the parties collaborated.

distant signal, and they all asked to receive a fixed share of the royalties to be paid by each particular retransmitter.

The major differences with the 1990-91 tariff were as follows:

- All collectives asked for an increase in the royalty rate. Most asked for a rate of 90¢; FWS asked that the rate be set at a dollar.
- Most collectives proposed that the flat rate for small systems be replaced by a royalty based on the number of premises served, although CRRA proposed a flat royalty of $110.
- Most collectives asked that a distinction be made between two categories of small systems, except FWS who proposed a single rate of 45¢ for all subscribers to small systems. Category A systems are those whose service area is the same as the operator's licensed service area (LSA) as established by the CRTC; these systems would pay at a rate of 45¢. Category B systems are those resulting from subdividing a LSA within which more than 1,000 premises are served; they would pay royalties at a rate of between 85¢ and 89¢.
- All but one collective asked that all large systems pay the full rate. They proposed that the scaled-in rate for large systems serving no more than 6,000 premises be abandoned. Only CRRA would have retained this feature, but in a much more modest form.
- Some collectives suggested that an additional royalty be paid for each superstation signal received.[10]
- All collectives except CRRA asked that the rate be adjusted annually to reflect the change in the Consumer Price Index (CPI).

Objectors and intervenors who expressed an opinion on the matter endorsed on the whole the structure of the 1990-91 tariff. All of them asked that at the very least, the royalty rates not be raised at all. CCTA argued for its part that a substantial reduction was warranted. CCTA and Quebec also argued in favour of a lower tariff for retransmitters operating in French-speaking communities.

All parties commented on the Cabinet criteria. Quebec and Ontario did so more extensively than other participants.

Allocation principles were also debated at length. Several collectives and one intervenor argued in favour of various readjustments to the approach taken in the 1990-91 tariff.

- FWS, MLB and CRC suggested an allocation based on "value beyond viewing."
- CBRA asked that account be taken of short programs which are uncounted by the current methodology for tallying viewing. BBC and CRRA asked to share in this benefit if the Board accepted it.
- PBS argued that the use of pools based on supply contravened the Board's obligation, set out in paragraph 70.63(2) of the *Act*, not to create distinctions based on the nationality or residence of copyright owners.

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[10] CCC, BBC, FWS and IOC asked for 20¢ per premises per station; MLB asked for 30¢.

- MLB asked to receive a larger share of any separate superstation royalty than it would for other signals.

E. THE MAIN ISSUES

Stated in a nutshell, the main issues to be addressed in this decision are the following. First, should the royalty rate and structure be reviewed in light of changes in the industry (rates of return, emergence of superstations), changes in the role played by distant signals within the industry (number of distant signals, viewing of distant signals), the Cabinet criteria, new evidence presented by the parties or industry reactions to the 1990-91 tariff? Second, does the record of these proceedings justify using a new or modified allocation methodology?

II. CABLE SYSTEM INFORMATION

This section describes the cable industry as it is pictured in the data presented to the Board. Comparisons are made with the industry as it was described in the 1990 decision. Appendix II provides the supporting figures and tables.[11]

The viewing data presented to the Board is analyzed in Section VI.

A. THE CCC AND CRRA CABLE DATABASES

Both CCC and CRRA prepared statistics of the industry in 1991. They provide, for all licensed operators in Canada, their names and locations, the call letters and originating networks of the signals they carry, the number of subscribers they serve and (where available) the fees they charge. The Board used these statistics to measure the effects of the first retransmission tariff and to gauge the impact of the new tariff proposals.

Data from both collectives contained essentially the same information, taken a few months apart. There were, nevertheless, some differences in the databases.

CRRA filed two separate databases: one for December, 1990 and one for June, 1991.[12] The core of CCC's data described the industry on March 31, 1991 (two years later than the first data set of March 18, 1989). CCC's data had the advantage of providing a fairly cohesive description of the industry at one point in time, and of offering a comparison with the data used in the 1990 decision.

The CRRA data was based on information supplied by Mediastats. CCC modified Mediastats data with "new or better information that we thought we had, including information from the retransmitters themselves."[13] For example, arguing that earlier data would be too stale to

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[11] In this section, unless stated otherwise, all references are to those tables.

[12] The details were the same but only one was received in electronic form. In response to a question at the pre-hearing conference about the usefulness of duplicate sets of data Mr. Staple suggested that eventually these would permit an analysis over time, but that he had not as yet done that or any other comparative analysis of the two sets submitted.

[13] Ms. Peacock, pre-hearing conference, at p. 32 of the transcripts.

accurately reflect their growth in penetration, CCC used discretionary carriage data for July 31, 1991, and superstation data for May 31, 1992.

The CCC database also distinguishes residential from institutional subscribers, such as hotels and hospitals; CRRA provides information only on residential subscribers. Finally, CCC gives information on systems as reported by retransmitters as well as reporting the LSA to which each of these systems belongs. Table 3 provides a comparison of descriptive statistics from the different data sets.

Ms. Peacock offered the opinion that differences between the databases appeared to be minor. Mr. Staple agreed and noted that any particular differences could be ascribed to random or observational error.

The Board finds that the databases contain much the same information, but it relies almost exclusively on the CCC data. As mentioned in the 1990 decision, the format of the CCC data makes it easier to use than the CRRA data.

Counsel for CRC argued that having to deal with two sets of data was costly and cumbersome. The Board itself has found this to be true. A party cannot be prevented from filing evidence. However, databases such as these are expensive and time-consuming to analyze as much as they are to produce. Most of the costs of coping with duplicate sets of data eventually end up being paid by the copyright owners and by the public.

The CRRA databases have been useful in establishing that the CCC databases, on which all other parties relied, are methodologically and substantively sound. However, at this point in the evolution of the retransmission royalties regime, it may prove more useful to improve the analysis of existing databases than to further duplicate the efforts involved in producing data sets.

B. COMPARISON BETWEEN THEINDUSTRY IN 1989 AND IN 1991

The new CCC database provides the same information as the last, as well as information on distant signals received by small systems and on non-residential subscribers. The Board welcomes this additional information. Since the 1989 database was restricted to information concerning residential subscribers to large systems, only that information can be compared with the 1991 database. However, small systems serve only a small proportion of all subscribers, and residential subscribers far outnumber all other subscribers put together.[14] Therefore, it is safe to assume that on the whole, what is true for residential subscribers to large systems is also true for all subscribers to all systems.

The number of residential subscribers to all systems has increased by about seven per cent; in LSAs serving more than 1,000 premises, the increase has been slightly more than five per cent.[15]

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[14] The CCC database lists 324,232 non-residential subscribers and 7,057,985 residential subscribers. The Board was not told how many premises the non-residential subscribers represent.

[15] LSAs are used here because they were the units used in the 1990 decision.

At the same time the number of distant signal instances on basic service in large systems has decreased by four per cent.[16] As a result, the average number of distant signals received by residential subscribers to large systems (including subscribers who receive no distant signals) has dropped from 4.56 to 4.26.[17]

The proportion of distant to all broadcast signal instances for large systems has dropped from 35 per cent to 32 per cent. The new data also shows that the ratio of instances of distant signals to all signals in small systems (54 per cent) is much higher than the 32 per cent for large systems.[18]

The distribution of subscribers between large and small systems continues to be heavily skewed. Whether one looks at LSAs or reported systems, three quarters of the systems serve no more than 1,000 subscribers. Conversely, over 92 per cent of subscribers belong to large systems. These distributions are very similar to that shown in Table II of the 1990 decision. Table 6 also shows quite clearly that most of the differences between the distribution based on LSAs and that based on reported systems can be traced back to one company which chose to report the largest LSA in Canada as 137 systems.

Table 6 shows that the distribution of distant signals received by subscribers also remains fairly centred and symmetric. At the tails of the distribution, less than one per cent of subscribers to large systems receive more than nine distant signals and 2.2 per cent belong to systems carrying no distant signals. The middle group of systems, carrying between three and eight signals, serve 65 per cent of subscribers, who receive over 80 per cent of all distant signal instances. This distribution is very similar to that shown in Table IV of the 1990 decision and suggests that the carriage of distant signals has remained stable.

Ontario and Quebec exert a strong influence on the statistics: these provinces are home to almost 64 per cent of subscribers to large systems. Subscribers in Quebec, accounting for 23 per cent of all subscribers, also receive the lowest average number of distant signals, partly because so many of them (37 per cent of subscribers to large systems) receive no distant signals at all. By contrast, subscribers in Alberta, B.C., N.W.T. and the Yukon receive on average more than twice as many distant signals as subscribers in Quebec, and no more than a handful receive only local signals.[19]

In response to questions raised during the hearing, the Board also investigated the distribution of

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[16] A distant signal instance occurs when a premises receives one distant signal. Thus, each premises receiving two distant signals will account for two distant signal instances.
Premises served and subscribers are not quite the same. There is an exact correspondence between residential subscribers and residential premises. However, most non-residential subscribers represent more than one premises: thus, a hotel counts for one subscriber but several premises.

[17] The number 4.56 was the average generated from the 1989 database and used by the parties during the 1990-91 tariff proceedings. The number 4.26 can be found in Table 2.

[18] The 1991 figures can be found in Table 4.

[19] These statistics can be gleaned from the provincial data in Tables 1 and 2.
This was not the case in 1989. The average number of distant signals per subscriber was 4.27 for Quebec and 4.64 for Canada excluding Quebec. In 1991, the figures for all residential subscribers are 2.55 and 4.76 respectively, while they are 4.06 and 5.08 for all residential subscribers receiving at least one distant signal. See Table 14. For the most part, this change results from fewer Vidéotron and CF Cable subscribers no longer receiving a distant signal.

signals to the provinces in each of the two official languages. The results are displayed in Tables 13 and 14, and examined in Section V.E.2.

C. SUBSCRIBERS RECEIVING ONLYLOCAL SIGNALS

Under the 1990-91 tariff, a retransmitter paid royalties only for those premises receiving at least one distant signal. Systems carrying only local signals to all the premises they served incurred no liability. It was mentioned in passing in the 1990 decision that three systems carried only partially distant signals, and that approximately 65,000 subscribers within those systems received no distant signals at all;[20] nevertheless, it was tacitly assumed that all premises received distant signals when calculations of the impact of the tariff were made.

The current database shows a much larger number of subscribers who receive, and systems who carry, only local signals. No distant signals at all were carried in 15 LSAs (including 17 reported systems).[21] In eight other LSAs (including 103 reported systems) not all subscribers received distant signals. In total, 846,363 subscribers in 120 reported systems received no distant signals.[22] In other words, only 88 per cent of residential subscribers in the 1991 database would trigger the tariff, a dramatic shift from the almost universal liability that existed earlier, according to the March 1989 database.

This decrease of 12 per cent can be compared with the drop of four per cent in the number of distant signal instances in large systems between 1989 and 1991. This difference occurs because most, if not all, of the premises now receiving exactly local signals were listed as receiving exactly one distant signal in the 1989 database.

The situation for signals originating in different cities but affiliated with the same network (duplicate signals) has not changed, on the whole.[23]

Unfortunately, both the databases filed during these proceedings contained little information on basic cable fees. The CRRA database provided information for only 462 out of 1,848 LSAs. Very few of the small LSAs were listed; yet it is in the smaller systems that most variation has been observed. Given such a small sample one can expect that the minimum and maximum rates are understated. Even so, the average rate paid by subscribers to small systems is still higher than that paid by subscribers to the large. The average fee charged by the systems for which data was available was $14.91, compared to $14.25 in 1989. There was no evidence to suggest that the

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[20] These systems were Rogers in Mississauga (#5343), Rogers in Victoria (#9358) and Cablenet in Oakville (#5385).
[21] This can be derived from CCC-1, Table D. In the following paragraph, the data refers to all systems, small and large. This information is included in Table 9.
[22] These statistics can be found in Table 10.
[23] Table 11 provides information on duplicated American and Canadian signals. The situation in 1989 was described at p. 12 of the 1990 decision *(pp. 10-11 in this volume)*. The numbers for the 1991 data are very similar: 2.5 per cent of subscribers in seven large systems received only duplicated signals, duplicates account for the same percentage of distant signal instances (19 per cent), and the same proportion (about 60 per cent) of subscribers received no distant duplicate signals in the 1989 and 1991 databases.

distribution of fees has changed much since March, 1989.[24]

The number of distant signals carried on discretionary tiers increased from 61 in March, 1989 to 107 in March, 1991. The number of instances increased from 672,107 to 992,059. The recent entry of superstations into Canada further increased the number of discretionary signals received, and may increase the number of subscribers receiving distant signals. The number of instances of the six superstations increased from approximately one million in September, 1991, to 1.6 million in May, 1992.

III. GUIDING PRINCIPLES AND THE CABINET CRITERIA

The Board enjoys a wide discretion in selecting guiding principles for the certification of retransmission tariffs, subject to two broad limitations.[25] First, the principles must be consonant with the wording of the *Act*. Second, in establishing the royalty structure, the Board must have regard to the Cabinet criteria.

This section reviews the main directions contained in the *Act*, the Cabinet criteria and the principles laid out in the 1990 decision, as well as certain comments that were made on them during these proceedings.

A. THE STATUTORY GUIDELINES

The *Act* provides that the tariff must be fair and equitable, must not discriminate among copyright owners on the basis of nationality or residence, and must provide a preferential rate for small retransmission systems.

B. THE CABINET CRITERIA

The Cabinet criteria require the Board, in establishing the royalty rates, to take into account:

a. royalties paid for the retransmission of distant signals in the United States under the retransmission regime in the United States;
b. the effects on the retransmission of distant signals in Canada of the application of the *Broadcasting Act* and regulations made thereunder; and
c. royalties and related terms and conditions stipulated in written agreements in respect of royalties for the retransmission of distant signals in Canada that have been reached between collecting bodies and retransmitters and that are submitted to the Board in their entirety.

i. How is the Board required to take account of the criteria?

Parties generally agreed that the criteria do not bind the Board to a particular result. They did not

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[24] These figures are found in Table 12 and can be compared with the figures in Table V of the 1990 decision.
[25] This was stated in the 1990 decision and confirmed by the Court of Appeal: see *FWS Joint Sports Claimants v. Canada (Copyright Board) (C.A.)*, [1992] 1 FC 487, at page 499 f-g.

agree as to how much account should be taken of them. Some considered that the Board had to address these issues, but could give any weight it saw fit to each criterion. For example, CRC argued that criterion (b) provides no real assistance, since the 1990 decision already takes the *Broadcasting Act* and its regulations into account. By contrast, Ontario argued that since the 1990 decision had examined the rates paid in the United States, the adoption of criterion (a) was an indication that the Board should give more consideration to these rates in setting the Canadian tariff.

The Board is required "to have regard to" the criteria. While it is bound to address the issues thus sketched out, it remains free to determine their weight in the final result.[26] The Board is, however, conscious that the issues on which an appeal to Cabinet can be made are precisely those on which criteria were issued.

The Board does not consider that the mention of an issue in the criteria means that it neglected to address it in the 1990 decision, although this may suggest that the Board ought to explore it more fully. To quote from the Ontario submissions, "although not paramount, [the criteria] are critical enough to merit active and significant consideration."

ii. Comments on criterion (b): the Broadcasting Act

Certain aspects of criterion (b) are reviewed here because they cannot conveniently be commented upon elsewhere. Comparisons with the American regime are made in Section IV, and the Canadian broadcasting regime in French-speaking communities is examined in Section V.E.2.

Parties commented most fully on the criterion dealing with the *Broadcasting Act* and regulations. Specifically, they tried to identify those aspects of the broadcasting regulatory regime affecting these proceedings.

CCC, relying on Professor Janisch's evidence, argued that the Board ought to focus on the carriage and retransmission of distant signals, and specifically on the simultaneous substitution and priority carriage rules, the so-called 3+1 carriage rules and the specialty services distribution and linkage rules. Attention was drawn in particular to the different carriage rules for francophone markets,[27] as well as to the linking of U.S. superstation offerings to Canadian pay television services. CCC argued, without specifying which they were, that the "cultural policy provisions" in the *Broadcasting Act* are irrelevant to the determination of fair and equitable compensation for copyright owners.

For its part, CRRA asked that the Board refrain from any measure that might "affect" Canadian broadcasting policy, arguing that this was the exclusive domain of the CRTC.

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[26] See, for example, R. v. *Police Complaints Board, ex parte Madden*, [1983] 1 W.L.R. 447 (Q.B.D.).
The *Regulatory Impact Analysis Statement* that accompanied the criteria may not be binding in interpreting the regulation, but is to the same effect.
[27] CRTC Public Notice 1987-261, filed as Exhibit CCC-52

CCTA asked the Board, when setting the royalties, to bear in mind the role played by the cable industry in the Canadian broadcasting system and the challenges facing the industry in the future. They emphasized the following aspects of policy. First, cable is to be the preferred delivery system for television services. Second, the industry is responsible for ensuring that Canadians, wherever they live, have access to the full range of cable services. Third, the industry faces key challenges in the future: meeting these challenges will require investments of some six to ten billion dollars over the next ten years.

Ontario supports a broad interpretation of criterion (b). In Ontario's opinion, it requires the Board to examine all issues unique to Canada and the Canadian broadcasting system. Ontario encourages the Board to go beyond issues such as simultaneous substitution, and to give greater weight to matters of public policy. It listed as being especially important:

- The role of U.S. signals as a fundamental instrument for attracting and retaining cable subscribers;
- The unique challenges faced by cable operators in francophone markets;
- The special status small systems enjoy before the CRTC;
- The need for the cable industry, in light of its obligations and responsibilities within the broadcasting system, to generate profits so that it can continue to invest in technology and services and attract and retain subscribers.

Quebec argued that the criterion required the Board to take into account particular characteristics of the French language broadcasting system and the groups it serves. For its part, Nova Scotia submitted that affordability of service was an issue that ought to be kept in mind in assessing these matters.

C. THE PRINCIPLES SET OUT IN THE 1990 DECISION

The 1990 decision set out six principles which the Board chose to keep in mind in setting the royalty rate as well as in allocating the resulting sum. According to these principles, the tariff should:

1. be fair and equitable;
2. reflect Canadian circumstances;
3. given a choice of approaches that equally compensate copyright owners, be the one that results in the least possible disruption to the cable services available to subscribers;
4. be based on a set of statistics for a test year;
5. reflect the actual retransmission of programs and recognize that some programs may be more valuable than others; and
6. be simple to administer, transparent and comprehensible.

The Board also decided to keep in mind the effects of the tariff on three groups: the retransmitters, the subscribers and the collecting bodies.

A few comments on these principles and how the criteria might affect them is appropriate at this point.

It is implicit in the 1990 decision that a fair and equitable tariff need not be based solely on a marketplace approach. The Board opted to start its analysis with the prices of comparable services. Having done this, it made adjustments that went beyond accounting for differences in the relevant markets. The choice of tariff formula was also clearly driven by policy and regulatory considerations. Among these were concerns about the financial impact of the tariff on small as well as large systems serving no more than 6,000 premises, geographic disparities, the potential disruption of services, the overall fairness of the compensation obtained by copyright owners and the need to reflect the special value of programming on Canadian signals.

SOCAN argued that the price set for retransmission rights should reflect only their market value. Accordingly, it suggested that the Board abandon its third principle. The Board rejects this approach. To accept that criticism would result in eliminating factors other than marketplace value in establishing the amount of the royalties. Furthermore, SOCAN's argument proceeds from a fundamental misreading of the principle. As stated, it speaks of minimizing disruption "given a choice of approaches that equally compensate copyright owners." The application of this principle alone does not affect overall compensation.

Parties commented on the meaning of these principles. Some sought to support specific ones: Province of Ontario called for a tariff structure that minimizes disruption to the service provided by retransmitters. Many parties argued that the record of this year's proceedings may lead to different results. However, without in any way impinging on the rights of the parties,[28] there is something to be said for a measure of stability, continuity and coherence in the regulatory environment. Indeed, consistency is a value that is gaining more recognition in administrative law.

The Board is of the opinion that the adoption of Cabinet criteria is not an attempt to override these principles. Some may even find support in them. Thus, Ontario points out that criterion (b) may be said to complement and expand the principle that the tariff should reflect Canadian circumstances.

Nor do the criteria call for a more marketplace oriented approach. If anything, the first two confirm the need to go beyond a simple economic analysis, and to delve even more into the realm of policy and regulation. Thus, it can hardly be said that on the whole, the U.S. rates are a reflection of a marketplace value. It is even more trite to state that the Canadian cable industry operates in a regulated environment. Yet, these are factors which Cabinet is asking the Board to keep in mind in reaching its decision.

On the whole, then, there are no apparent reasons to abandon or modify the principles in the 1990 decision. In practice, the Board should pay particular attention to those aspects of the evidence dealing with the Cabinet criteria. These are addressed at length in Sections IV and V.E.2.

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[28] The Board is mindful of the decision in C.B.C. v. *Copyright Appeal Board* (1990), 30 CPR (3d) 269 (FCA).

IV. COMPARISON WITH THE AMERICAN RETRANSMISSION REGIME

In the 1990 decision, the Board identified four quantifiable differences between the Canadian and American retransmission systems. In Canada, cable penetration was higher, the average number of distant signals carried per subscriber was greater, the incidence of program duplication on Canadian distant network duplicates was lower and distant signals attracted a larger share of viewing. The Board concluded that in view of these factors, the rate in Canada should not be lower than in the United States (which was found to be U.S. 43¢ in 1988). The Board added that it found inter-country comparisons of any kind fraught with difficulties, because of differences in industry structure, relative prices, income levels and cultures.

The Government criteria require the Board to have regard to royalties paid for the retransmission of distant signals in the United States. The record of these proceedings now contains updated and additional information comparing the two systems. Objectors attempted to demonstrate that even with reasonable adjustments, the American rates were much lower.[29] For their part, the collectives argued that once appropriate adjustments were made, the rates they were asking for were reasonable compared to those paid in the United States.[30] The Board is of the view that with appropriate adjustments, the American regime would generate a rate of either Can. 60¢ or Can. 65¢ per premises in the Canadian market.

A. THE AMERICAN REGIME: GENERAL INFORMATION AND DATA

There are two separate retransmission royalty regimes in the United States. One applies to cable retransmission, the other to direct-to-home satellite retransmission.

The cable retransmission royalty rates are based on a declining percentage of gross receipts per distant signal equivalent (DSE).[31] The rate applicable to most distant signals is set by legislation; the Copyright Royalty Tribunal (CRT) can change those rates only under specific circumstances. It may adjust the rate when the Federal Communications Commission (FCC) modifies its rules governing the number of signals that cable systems may carry or its rules on syndicated exclusivity. It may also review the rate once every five years to reflect the rate of inflation. Currently, the highest statutory rate is 0.893 per cent; it applies to signals that were available to retransmitters at the beginning of the regime in 1976. A rate of 3.75 per cent was set by the CRT in 1982 for signals that became available after 1980, when the FCC abolished its rules limiting distant signal carriage. The royalties generated by the cable retransmission regime, including small retransmission systems, were U.S. $204 million in 1989; they dropped to U.S. $164 million in 1990.

DTH retransmissions by satellite carriers to non-cabled areas are governed by the *Satellite Home Viewer Act* of 1988. The legislation set a rate of U.S. 12¢ for independent stations, and U.S. 3¢ for network stations and educational stations. This rate was reviewed after four years. Effective

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[29] Using a starting point of Can. 31¢, CCTA arrived at between Can. 45¢ and Can. 49¢.
[30] Using a starting point of Can. 33¢, CCC came to between Can. 99¢ and Can. $1.05.
[31] An independent station is assigned a DSE of one, while a network or educational station is assigned a DSE of 0.25.

May 1, 1992, the CRT set the top rate at U.S. 17.5¢ for two years for independent stations. To arrive at this figure, the CRT calculated a rate per subscriber per signal for royalties paid by cable operators in the second half of 1989, adjusting the amount to inflation. The satellite retransmission regime generated royalties of U.S. $2.4 million in 1989, and U.S. $3.11 million in 1990.

According to the data provided by the parties, there are somewhere between 47.7 million and 52.1 million American subscribers to systems serving more than 1,000 premises, and between 50.2 million and 54.9 million subscribers to all systems. Subject to the differences already noted, the distributions appear to be more or less in line with the figures for the Canadian market. Only two further differences need to be noted for present purposes. First, the subscribers to Form 3 systems receive on average only 2.82 distant signals.[32] Second, less than one quarter of one per cent of cable subscribers received no distant signals.

B. CONVERTING AMERICAN ROYALTIES TO A PER SUBSCRIBER RATE

The Government criteria ask that the Board have regard to the royalties paid in the United States. This comparison is made difficult by the dramatic differences in rate structure between the two countries. Two parties performed certain calculations in order to help the Board convert American royalties into a monthly rate per subscriber to large systems. CCTA, using reports filed with the American Copyright Office for 1990 and subscriber information provided by Nielsen for the same period, came to a figure of Can. 31¢. CCC, using figures supplied by the Cable Data Corporation for the same period, suggested a figure of Can. 33¢.

On the whole, both approaches are equally satisfactory; both also raise a few difficulties. CCC's figure may be slightly too high because of underreporting. On the other hand, CCTA's figure may be slightly too low because it accounts for premises that are connected illegally to cable: since American royalties are based on a percentage of revenues, no royalties are paid on account of those premises, and they should not be part of the equation. However, given the small difference between the figures both parties arrive at, the Board opts for using Can. 32¢ as the starting point for its calculation.

C. ADJUSTMENTS

Both parties acknowledged that any fair comparison with the American system must take into account certain significant differences between the situations in the two countries. They did not, however, agree on all of those adjustments. These are reviewed in the following pages.

i. Syndex Surcharge Adjustment

At the time the American retransmission royalty regime was set up, FCC rules (the syndex rules) allowed a local television station operator to demand from a retransmitter the deletion from any distant signals of all syndicated programming under exclusive local exhibition contract with the

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[32] These are, generally speaking, the larger systems.

station operator.

The syndex rules were eliminated in 1980. As a result, the CRT required that American retransmitters compensate copyright owners by paying a surcharge. The rules were reinstated in 1988; the CRT followed suit by abolishing the syndex surcharge. CCC argued that this reduced the total cable royalties by 20 per cent in 1990. CCTA agrees with the figure, but argues that the adjustment may not be needed, because in its opinion, Canada's simultaneous substitution rules serve a purpose similar to the syndex rules.

The Board finds that there is no need for an adjustment to account for the abolition of the syndex surcharge. The Canadian rate accounts for the effects of simultaneous substitution to the tune of 20 per cent. Since the syndex surcharge also represents 20 per cent, its effect can simply be ignored in the calculation.

ii. Adjustment for the Carriage of Distant Signals

Both CCC and CCTA agreed that the American rate should be adjusted upwards to account for the lower number of distant signals received by subscribers in the United States. They also agreed to start with a figure of 2.82 in the case of American subscribers. However, they disagreed on the figure that ought to be used for Canadian subscribers. CCTA suggested using the average number of distant signals, excluding superstations, received by subscribers to large systems, which according to the Board is 4.51; CCC suggested using the average number of distant signals received by subscribers to large systems who receive at least one distant signal, also excluding superstations, which according to the Board is 5.08.[33]

Superstations are not included in these figures. In May, 1992, they represented 0.22 signals per subscriber. This brings the suggested averages to 4.73 and 5.30 respectively.

The parties also disagreed on an adjustment to account for the difference between the American and Canadian averages of signals received, given the lower value of multiple signals. CCTA put forward a composite of the various discount formulas pre-sented during the 1990-91 tariff proceedings; using the figures of 4.73 and 5.30, this would yield an adjustment of 37 per cent or 43 per cent, respectively. For its part, CCC argued for the multiple signal discount put forward by CCTA during the 1990-91 tariff proceedings. This yields adjustments of 55 and 65 per cent, respectively.

Two further approaches are possible. The first applies the American rate structure to the additional signals, yielding an adjustment of 34 per cent (using 4.73) or 40 per cent (using 5.30).[34] Such an approach reflects what the American regime would generate if more distant signals were carried. The second simply reflects the difference in the absolute number of distant

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[33] Table 2, Appendix II, yields
4.02 + 0.34 + 0.15 = 4.51, and
4.91 + 0.17 = 5.08.

[34] According to this price structure, the second, third and fourth signals are worth 63 per cent of the first, while the fifth and subsequent signals are worth 30 per cent of the first.

signals, without any discount, yielding an adjustment of 68 per cent (using 4.73) or 88 per cent (using 5.30).

In the Board's opinion, since the figure of Can. 32¢ already reflects the discount for the first 2.82 signals in the American royalty regime, the proper way to account for additional signals lies somewhere between the last two approaches. Thus, using 4.73 distant signals the adjustment is between 34 and 68 per cent (or 51 per cent), and for 5.30 distant signals between 40 and 88 per cent (or 64 per cent).

iii. An Alternative Distant Signal Viewing Adjustment

CCC came to several conclusions on the basis of data supplied by the Nielsen organization. First, distant signals are watched extensively in both countries. Second, distant signal viewing is higher in Canada. Third, the difference is even more pronounced if the (more expansive) Canadian definition of a local signal is used. CCTA suggested that the difference in viewing ratios (22.2 per cent, being the difference between 18.3 per cent and 14.9 per cent) inflated the true difference of 10.6 per cent because it did not take into account that Americans watch more television than Canadians. CCTA saw a viewing adjustment as an alternative to the distant signal adjustment; to do both would result in double counting, since when distant signals are added, viewing does not decrease.

The Board does not see this approach as a valid alternative to the distant signal adjustment. Since neither party suggested an adjustment, there is no need to debate it.

iv. The American Statutory Discount for Network and PBS Stations

CCC urged the Board to adjust the rate upward to account for the provision in the American statutes for a discount of 75 per cent for network affiliates and PBS stations. CCTA countered by arguing that the discount exists to account for the sale of national rights and its impact is not dramatic; were network and educational stations to receive a full DSE the royalty pool would increase by only about 15 per cent. According to CCTA this adjustment would be easily offset by the substantial amount of programming sold nationally in Canada that is carried on distant signals received in Canada.

The Board agrees with CCC that an adjustment is in order. The rebate is for the purchase of American, not Canadian, rights on American signals. Furthermore, the evidence filed by CCTA on Canadian signals was insufficient to justify a discount based on the purchase of national rights.

Based on the figures in CCC-32, the adjustment should be of 18.8 per cent, and not 15 per cent.

v. The Inflation Adjustment

CCC applied in its calculations an increase of 3.3 per cent to account for the rise in the American CPI between December, 1990 and December, 1991.

It is true that the American rates have not been adjusted for inflation since 1985, and will not be

until 1995. However, American royalties are based on a percentage of revenues and adjust with inflation. Since the numbers being used date from 1990, the Board finds it appropriate to make an adjustment to December 31, 1991. The inflation adjustment allows one to determine what the royalties paid in the United States might look like on January 1, 1992.

D. CONCLUSION

The Board finds that using a starting point of Can. 32¢, the rate should be adjusted as follows:

- An increase of 18.8 per cent to reflect the statutory discount granted in the United States for network affiliates and PBS stations. This brings the rate to 38.0¢.
- An increase of either 51 per cent or 64 per cent to reflect the difference in the number of distant signals carried. This would bring the rate to either 57.4¢ or 62.4¢.
- A final increase of 3.3 per cent to account for the rate of inflation in the United States. This brings the rate to almost 60¢ or 65¢.

Other, less tangible differences do exist. For example, the American definition of distant signal is quite different from the Canadian definition.[35] The Board finds it unnecessary to factor these into the comparison with the American royalties.

By comparison the Canadian rate of between 20¢ and 70¢ set for large systems in the 1990-91 tariff was expected to yield an average of 67¢ per premises per month.

V. THE ROYALTIES TO BE PAID FOR TELEVISION RETRANSMISSION

A. THE CHOICE OF APPROACH

In 1990, the Board had to set a price for distant signals where none had existed before. It set that price using a "comparable services" approach. It concluded that the Arts & Entertainment (A&E) specialty service was an acceptable proxy for this purpose. Adjustments were made to account for differences between distant signals and A&E. The Board concluded that 15¢ appeared to be a reasonable average price for distant signals, consistent with a number of pricing strategies reflecting different prices for signals within a package, even though the tariff structure made it unnecessary to determine exactly what each price might be. The Board also set the maximum rate at 70¢ per premises, noting that this corresponded to just over 15¢ for a distant signal for the average Canadian subscriber.

In these proceedings, most of the participants urged the Board to revisit its comparable services

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[35] In the United States, the local character of a station is determined by geographical or viewing tests. Thus, depending on the location of the cable system, a station may be local if it is "significantly viewed," as well as if its Grade B contour or its 35-mile "market zone" encompasses part of the cable system. Criteria vary according to whether the cable system is located within the "top 100 markets" or not, or outside all markets (that is, more than 35 miles away from any full power television station). As can be seen, significant comparisons between the two regimes are difficult to make.
For a full list of the criteria used in the United States, see Exhibit CCTA-4, Appendix A.

analysis in setting a new price for distant signals. CRC, FWS and MLB asked that the usefulness of A&E as a proxy be reassessed. Most other parties used the current A&E price as a starting point, and sought adjustments on what they argued was new or better evidence on A&E's characteristics and on the characteristics of the market for distant signals. Where parties disagreed was on the results of this re-examination. Collectives argued for an increase of the royalty rate to 90¢ for 1992; CCTA maintained that the exercise should lead to a drop in the royalty rate to between 33¢ and 47¢.

Only CANCOM suggested that the Board not proceed with a fundamental review of the proxy, and use the 1990 price as a starting point. The Board finds this approach preferable, for the following reasons.

First, once a price has been set using a proxy market analysis, it is not necessary that it be tethered to fluctuations in the price of the proxy that was used in arriving at it. It can gain a life of its own, without any strict regard to its origins.

Second, the very number of adjustments suggested by the parties militates against re-engaging in the exercise performed in the 1990 decision. Each adjustment weakens the robustness of the proxy market as a measure of the target market, and increases the margin of uncertainty. The greater the number of adjustments proposed, the more reasonable it becomes to use another starting point. This does not mean that the proxy market analysis should be abandoned in setting the retransmission tariff. Such an analysis has to be performed periodically in any regulated market, if only to help trace the evolution of prices in similar markets and to minimize inconsistencies in the price paid by similar users for similar goods.

Third, and most important, there is less need to use a proxy when an existing price, even an administered price, can be used as a starting point. This is especially true where information is available to determine whether or not the existing price is appropriate, and whether or not any adjustments ought to be made to account for changes in circumstances.

In the Board's opinion, the record of these proceedings confirms that the current price was and is appropriate. Messrs. Grant, Pezarro and Stein, Professor Janisch and Ms. Peacock, amongst others, testified on the repercussions of the price set in the 1990-91 tariff on the market. Their testimony confirms that the tariff's impact has been more or less what the Board had anticipated. Since the imposition of the tariff, the number of subscribers to cable has continued to increase. There appears to have been little change in the number or type of distant signals carried. Most signals dropped were duplicates of local signals. Two operators have chosen to drop the same unduplicated distant signal. That signal (TVOntario) was in the minority language of the markets and probably attracted small audiences. The profits of retransmitters may have decreased, but whether this was a direct result of the imposition of the tariff is far from clear. Some cable operators testified that any increase in their liability under the tariff would be burdensome; none complained that the existing tariff was punitive.

Looking at the issue from the copyright owner's perspective, it seems that the tariff revenues

have been more or less what the Board had anticipated.[36] It should also be noted that under the tariff as currently structured, owners benefit from the increase in the number of cable subscribers, whether or not the number of distant signal instances increases.

The tariff appears to have been both acceptable and accepted by the parties. Its only negative consequence has been that some subscribers lost an unduplicated distant signal. That is an uncompensated loss for those viewers which may require certain adjustments to the tariff structure.

Using the existing price as the starting point one can then decide if circumstances warrant an adjustment to it. Much of the evidence dealing with adjustments to the distant signal proxy price can also be used for this purpose.

B. ANALYSIS OF THE EVIDENCE ONTHE PROXY MARKET

As a preliminary matter, it is necessary to address the argument that A&E ought to be replaced as the proxy. In the Board's opinion, the evidence confirms that A&E remains the proxy of choice, for the reasons stated in the 1990 decision. It is a general service, which continues to compare favourably with other specialty services. Furthermore, the Board continues to be of the opinion that resort to U.S. specialty services that are not available in Canada is inappropriate, and that it is better to use a single price as a proxy, rather than to attempt to blend the prices of several specialty services, which do not share the characteristics of a general service.

i. Increase in the Price of Specialty Services

A&E's price went from 25¢ in 1990 to 29¢ in 1992; it was expected to increase to 31¢ in September, 1992 and to 33¢ in September, 1993. By contrast, the wholesale rate of Canadian specialty services has increased by only 5.21 per cent from 1990 to 1992. No explanation was given for these increases. They do not, in and of themselves, justify an adjustment in the proxy price (or in the current price), especially given the current economic climate.

ii. The Attractiveness of A&E's Programming

Several collectives continue to argue that A&E's programming is less valuable than that on distant signals because of the lack of first run dramas, current news and live sports programs. This argument was rejected in the 1990 decision. Any attempt at setting different prices for different distant signals based on such notions as content and attractiveness is fraught with difficulties. Such an approach requires at a minimum a detailed comparative analysis of the program content of all types of signals, distant and local, as well as information on programming patterns during and outside prime time. The costs of such an exercise would probably exceed the benefits that any party might derive, yet without such information, one is left with a general statement but no tools to effect the proper judgments as to the prices to be assigned.

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[36] See the discussion of estimated revenues in Section V.H.

iii. Repeated Programming of A&E

CCC and CRC have renewed their argument that the pattern of reruns on A&E makes it a less valuable signal, without providing the Board with much more guidance than during the 1990-91 tariff hearings. A "mirror schedule" that allows viewers in the East and the West to see programs during prime-time is not an obvious drawback. The evidence is that viewers do not resent the practice, and that one would have to watch five to seven hours at a sitting before seeing a repeated program.[37] Furthermore, distant signals also repeat programs or carry reruns. Repeats and reruns are a convenience for subscribers. They do not, in and of themselves, imply a lower value for a signal: the most expensive services available (movie channels) have the most intense repeat patterns.

iv. The Cost of Importing Distant Signals

Retransmitters incur capital and operating costs to capture and relay distant signals; by contrast, Mr. Temple stated that A&E is delivered to the head end at no cost to a retransmitter. If this is the case, the proposition has merit. However, CCTA did not succeed in establishing how these costs contributed to the price of the average distant signal. The sample used for these calculations comprised mostly systems in Ontario; Ontario systems carry fewer distant signals than the national average.[38] CCTA failed to satisfy the Board that incremental costs for the capture of distant signals had been properly identified. Finally, Mr. Temple's assertion that a retransmitter incurs no cost in carrying A&E was questioned and remained unsupported.

v. Marketing Support

Mr. Temple estimated that A&E's marketing support, which cable operators do not get for distant signals, is worth a penny per month to them. Mr. Davatzes stated that it is closer to 3¢ a month. CBRA countered that retransmitters derive some benefits from the marketing efforts of broadcasters of distant signals; it offered no evidence on their nature or extent.

No promotional effort is required to market any particular signal carried on basic service; where a service is optional, as is A&E, some marketing effort may be required to attract subscribers and keep them. This would be one adjustment required to a proxy such as A&E; however, it would prove difficult to quantify.

vi. Extended Basic and Basic Service

Most cable operators who carry A&E do so on the negative option (or extended basic) service rather than on the basic service. Mr. Temple explained that rates for services carried on the former are higher because the risk to the service provider is greater. Mr. Davatzes also acknowledged that the rate for A&E would go down if it were carried on basic service. On the other hand, CRC and CBRA pointed out that A&E's rate card does not provide for any "volume"

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[37] Mr. Davatzes, at p. 4908; Mr. Temple, at p. 4986.
[38] Mr. Temple did attempt to account for the second factor in a recalculation of the discount he would have applied.

discount.

In the 1990 decision, the Board stated that in order to achieve almost universal penetration, the A&E price would have to fall. The Board did not attempt to quantify the effect of tiering on the price of A&E or the general effect of tiering on the carriage of a signal, as this was not possible. It simply subsumed this effect under the 20 per cent discount allowed for penetration, packaging and volume considerations.

Were the Board to perform again the proxy market analysis, it would treat this factor in the same way as it did in the 1990 decision. There appears to be some correlation between penetration and the tier on which a signal is located. There is also evidence that the wholesale price of a signal may change when offered on different tiers. The price of most specialty services fell as they were transferred to the basic tier. MuchMusic costs 23.5¢ on extended basic with 84 per cent penetration on the tier, whereas it costs 10¢ on basic service.

The events of the last two years also bring out that price can affect penetration. With the imposition of the retransmission tariff, penetration of distant signals on the basic tier has dropped to 88 per cent. Some retransmitters dropped unduplicated distant signals to avoid liability under the tariff.

vii. Willing Buyers and Sellers

CCTA argued that the Canadian rate for A&E contains an artificial market premium which ought to be eliminated from the proxy price. It maintains that this is the effect of the CRTC's linkage requirements and the limitations on American services that operators are allowed to purchase. The Board rejects that argument. It agrees with CBRA's arguments that the imperative to carry A&E is internally generated within the cable companies, not imposed by an external agent. Retransmitters do not have to acquire A&E, and can leave channels "empty."

viii. Blackouts

A small portion (the evidence is that it is less than two per cent) of A&E programming is blacked out because Canadian rights have not been cleared. When this occurs A&E provides substitute programming. CRC argued that there is no evidence that the substitute programming is worth as much as the blacked out programming. The Board prefers to approach the issue the other way around: there is no reason to believe that the latter is worth any less than the former.

ix. Programming Expenses Issues

The 1990 decision rests on two implicit findings of fact. First, specialty service operators had two roughly equal sources of revenue: subscription fees and advertising and other revenues. Second, expenses were divided equally between programming and other expenses.

During these proceedings, the Board asked specific questions about the relationship between programming costs and advertising and subscription revenues of specialty services. It now appears that the ratios of program expenses to subscription revenues and of programming costs to total costs in Canada are quite different from those advanced by Mr. Grant during the 1990-91

tariff hearings. Mr. Grant recognized that there is probably no strict link between these figures. However, having drawn a distinction between the cost of programming and its worth to retransmitters, he suggested that the wholesale price of A&E remains an appropriate proxy because its producers view it as essentially the resale of a service to retail customers, whose sole value lies in its programming.

A retransmitter would not buy a signal whose programming could be assembled and delivered for less than the price of the signal. Therefore, that price can be assumed to be the upper limit of what a retransmitter is willing to pay for the embedded programs. Furthermore, the object of retransmission rights is to reward the owners of programs carried on signals. It is arguable that they should not benefit from any value added by the supplier of the specialty service. Finally, since A&E generates no advertising revenues in Canada, any relationship between subscription revenues and programming costs becomes problematic. Under such circumstances, it would be wise to discount the A&E price in order to avoid overestimating the value of copyright, although it would be difficult to say by how much.

CRC and CCC also argued that the comparison of programming costs and subscription fees is irrelevant. In their view, programming costs are sunk costs that need not be recovered in the selling price. This is certainly true in the short run, but it is difficult to see why A&E would stay in business if it did not cover all of its costs, including sunk costs, from its overall revenues, most of the time.

CRC noted a further complication: a sale to A&E may foreclose a sale in Canada at a price that is higher than the premium A&E is paying for the Canadian rights. For this reason, it would not be proper to allocate A&E's programming costs between Canada and the United States on the basis of the distribution of A&E's subscribers in the two countries.

Given the difficulties of getting a reliable "per subscriber program cost" rate, the Board is again left merely to note that this is a consideration in assessing the value of distant signals compared to the wholesale price of the proxy.

x. Changes in the Number of Distant Signals Received

The average number of distant signals received by subscribers to large systems carrying at least one distant signal is 4.51; it rises to 5.08 when only subscribers receiving distant signals are included. With the addition of a factor of 0.22 to account for the supply of superstations, the average becomes either 4.73 or 5.30.[39] These figures are higher than the number used in 1990 (4.56).

Were it necessary to use a particular number, the Board would tend to use the first average. The obligation to pay falls on those retransmitters who carry at least one distant signal, even though measure of that obligation may be a function of the number of premises who receive at least one distant signal. Using the average number of distant signals received by subscribers receiving

[39] Based on the numbers available for May, 1992.

distant signals also brings about a counter-intuitive result. As the number of premises receiving at least one distant signal de-creases, the average number of signals received by others increases. According to CCC's reasoning, this should lead to an increase in the rate, even though other retransmitters may carry the same number of distant signals as before.

In any event, the difference in price that results from using one average rather than the other is not as important as it might seem at first glance. The 15¢ "price" is an average for the signals in the bundle of distant signals received by the average consumer. All parties recognize that at some point, added signals have less value to the retransmitter and the consumer than the signals before them. If that is the case, A&E cannot be simultaneously a good proxy for the single distant signal received in Toronto and for each of the six distant signals received in Vancouver. As a result, an increase in the average number of distant signals received necessarily entails a reduction in the average price of signals, and therefore in the proxy price.

xi. Decreased Viewing of Distant Signals

All of the relevant data presented during the hearings, whatever comments may be made about it, show that distant signal viewing has decreased since 1990. Contrary to what was suggested during these proceedings, it is unlikely that this decrease is caused entirely by the decrease in the carriage of distant signals.[40] Since the signals dropped were duplicates of local signals and an educational service in the minority language in its market, their share of viewing was probably small. Viewing of distant signals had started to decline earlier. This is an independent trend but, having said this, the numbers would not be sufficient to warrant an adjustment to the price. On the other hand, the drop in viewing could counterbalance other factors which might justify raising the price of distant signals.

xii. Levels of Simulcasting

CRC initially submitted that the incidence of simulcasting was approximately 19 per cent, compared with 20 per cent in the 1990 decision. CCTA then filed data establishing the incidence of simulcasting throughout Canada at 19.3 per cent during prime time, 11.0 per cent outside prime time, and 15.5 per cent during the whole of the day. Using these figures, CRC and CBRA argued that the number to be used in discounting the proxy price should be 15.5 per cent.

In the 1990 decision, the Board stated that 20 per cent might be an underestimate of the incidence of simulcasting, since this figure gave no extra weight to simulcasting during prime time. The evidence of CCTA confirms the Board's impression that simulcasting is more pervasive during prime time. If, as Mr. Martel stated, prime-time programming attracts about three times as much viewing per hour as programming outside prime time, 20 per cent remains eminently reasonable.

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[40] This conclusion is implied by the table found at page 23 of CCC's reply argument.

xiii. Adjustments to the Current Price: Conclusion

A review of the evidence confirms that the price set in 1990 continues to be appropriate. Even under a proxy market analysis, the Board would opt to make no adjustment to that price. There are a number of factors that could call for adjustments under either approach. However, their impact in most cases remains undefined; they also appear to balance each other on the whole. The price of A&E may have gone up, but the price fixed in the 1990 decision took no account of factors such as delivery costs and marketing support; furthermore, the evidence now suggests that any correlation between programming costs and the wholesale rate is at best imperfect. While the average number of distant signals per subscriber may have gone up slightly, their viewing share (and therefore, to some extent, their attractiveness) has gone down. The absolute level of simulcasting may be lower than was estimated in the 1990 decision, but the record now shows that simulcasting is much more prevalent during rather than outside prime time.

Finally, its more comprehensive analysis of the American regime satisfies the Board that the price for distant signals in Canada was set at the proper level and remains fair and equitable.

C. SMALL SYSTEMS

Small retransmission systems are entitled to a preferential rate. In 1990, that rate was set at $100 per year per system. The collectives ask that small systems pay according to the number of premises served, at half the rate paid by large systems. They also ask that a distinction be made between two types of small systems.

i. The Definition of Small Retransmission System

According to subsection 70.64(2) of the *Act*, it is for Cabinet to define a small retransmission system. Section 3 of the *Definition of Small Retransmission Systems Regulations*, SOR/89-255, (*Canada Gazette* part II, vol. 123, page 2588), reads as follows:

> 3. (1) Subject to subsection (2), forthe purpose of subsection 70.64(1) of the *Copyright Act*, as enacted by S.C. 1988, c. 65, s. 65, "small retransmission system" means a cable retransmission system or a terrestrial retransmission system utilizing Hertzian waves, that retransmits a signal, with or without a fee, to no more than 1,000 premises in the same community.
>
> (2) The definition set out in subsection (1) does not include a cable retransmission system that is a master antenna system located within the service area of another cable retransmission system that retransmits a signal, with or without a fee, to more than 1,000 premises in the same community.

This definition is built on the notion of community, not LSA. In the 1990 decision, the Board equated system with LSA. No one took issue with this approach then.

Some operators divided for the purposes of the tariff 166 LSAs into 1,040 reported systems which, they claim, serve separate communities within the meaning of the regulation. The most striking example of this is in the Montreal metropolitan area, where *Vidéotron* reported 68 small

and 69 large systems within the same LSA.

Most collectives maintain that the regulation pre-serves the link between system and LSA. Alternatively, they ask that the Board establish two categories of small systems. Small systems that cover a whole LSA would pay at a rate of 45¢ per premises served.[41] Those resulting from subdividing a LSA in which more than 1,000 premises are served would pay royalties of between 85¢ and 89¢. The collectives argue that this distinction is warranted since the latter lack some of the characteristics that justify the preferential treatment for "true" small systems.

There are sound legal and logical reasons to argue that the notions of system and LSA are not interrelated. Subsection 3(2) of the regulation clearly contemplates the existence of a system (the MATV) within the LSA of "*another* ... system." Common sense would also lead one to accept that Saint-Eustache and Montreal, both served by reported systems belonging to the same LSA, are nevertheless separate communities. Messrs. Lawrence, Nakai and Temple also offered evidence to demonstrate that from the engineering, technical, geographical and demographic points of view, LSAs and systems can be quite distinct entities.

This is not to say that the interpretation of the regulation put forward by CCTA and used by certain cable operators is either the best or the only reasonable one, or that the position taken by the collectives is untenable. At first glance, it is difficult to accept, without further justification, the chopping up of a single LSA into more than one hundred systems. Furthermore, as was pointed out by Ms. Peacock, certain decisions of the CRTC do appear to equate the notions of LSA and cable system. Even the President of CCTA admitted that there is a spectrum of more or less acceptable definitions that were being advanced by the various cable operators.

Parties have proposed several solutions. One would require the Board to refine the regulation's definition. Assuming that this was the best way to address the issue it behooves Cabinet, not the Board, to do so.

Others agree that the Board cannot change the definition, but ask that it provide the parties with its interpretation of the definition. In the Board's opinion, doing so would be necessary only if its choice of approach in setting the small systems tariff is different under the various possible interpretations.

The criteria used by cable operators to establish the existence of small systems within a single LSA were not used consistently and remain at best uncertain. Certain collectives appear ready to agree that under certain circumstances, there could be more than one system in a single LSA.[42] Ontario suggested criteria by which a small system might be defined, including distinctness, non-contiguity, and separateness; it also submitted that such systems do face the same constraints as any other small system.

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[41] The same rate would apply where no more than 1,000 premises are served within the LSA, irrespective of the number of reported systems.

[42] CCC stated that it would accept that an operator pay the 45¢ rate even though there were more than 1,000 premises served within a LSA, if all reported systems within the LSA each served no more than 1,000 premises in a "separate and distinct and non-contiguous" community: argument, pp. 47-48.

The correct interpretation of the regulation, whichever it may be, would not change the Board's approach to the small system tariff. Any unit distinct enough to be a small system under a reasonable interpretation of the regulation faces, on the whole, the very sort of constraints that have led to the adoption of the preferential treatment and to the setting of the tariff as it was done in 1990.

ii. The Choice of a Single, Flat Rate for Small Systems

The Board remains convinced that the approach taken in the 1990 decision is suitable, for the reasons given in that decision. At this time, a single, flat rate within the class continues to be fair. The Board shares the view put forward by CANCOM and Regional; any formula other than the current one would prove prohibitive for small operators.

The Board remains of the opinion that the administrative burden imposed on small systems by the tariff structure ought to be light: this is an important aspect of the preference afforded to small systems. A flat yearly rate allows small systems to avoid the heavy burden of reporting every month and of computing royalties on a per premises basis. The approach suggested by the collectives would result in tens of thousands more cheques being issued by the operators and processed by the collectives each year.

The Board remains unconvinced by attempts to show that small systems can afford to pay at half the rate of large systems. The evidence offered by Mrs. Farrow referred to less than a quarter of the small systems listed in the database; nothing ensured that the data thus gathered was in any way representative of the whole class. If anything, the evidence confirmed that the profitability of small systems is much more problematic than that of larger ones. Furthermore, ability to pay does not of itself establish a fair price.

CCC points out that small systems are allowed to pass through increased costs without regulatory authorization. This does not address the real issue. No evidence was offered that market conditions effectively allow small systems to pass through the cost of increased royalties; whether small systems passed through the cost of the 1990-91 royalties or absorbed it themselves remains unknown. Second, passing through greatly increased royalties would only serve to exacerbate the discrepancies between the cable fees paid by subscribers to small and large systems. In its choice of rate structure for large systems, the Board attempted to minimize the effects of geography; having done this, it is unwilling to take measures that would accentuate the effects of geography when it comes to small systems.

Finally, for the same reasons that lead it to maintain the large system rate at its current level, the Board has decided to maintain the small system rate at $100 a year. In the Board's opinion, the collectives have not demonstrated any significant change in the circumstances of small systems that would justify increasing that amount.

The argument that the rate of $100 a year is "nominal" rather than "preferential" was repeated by some. It has been dealt with conclusively by the Federal Court of Appeal in *FWS, supra*.

The Board also notes that, as was brought up by Regional and CANCOM, the small system rate it adopts is consistent with the level and structure of royalties paid by small systems in the

United States.

D. THE RATE FOR SYSTEMS SERVING NO MORE THAN 6,000PREMISES

Most collectives urge the Board to abandon the scaling in of the rate for large systems serving no more than 6,000 premises. This argument is based mainly on the evidence of Mrs. Farrow, who stated that those cable systems have no particular need of such a concession.

In its final argument, CCC submitted that Mrs. Farrow had established that there was no threat to the economic viability of large systems serving no more than 6,000 premises. The Board agrees with this conclusion.

CCC then went on to argue that there is no economic basis for establishing a scaled-in rate. At this point the Board parts company with CCC. Mrs. Farrow's evidence did not address other economic arguments in favour of the structure of the 1990-91 tariff, which are independent of the ability to pay of the retransmitters. Any regime setting a preferential rate for small systems, short of one where all systems pay the same rate for the number of premises that define small systems, will create threshold problems. Systems could face increases of 8,400 per cent in the absence of some mechanism for bridging the gap between the royalties paid by a system serving 1,000 premises and one with 1,001. Problems of avoidance and evasion are as much economic questions as ability to pay, and the Board has attempted to balance these considerations.

The Board also is of the opinion that the arguments in favour of scaling in the tariff remain as relevant now as they were two years ago. Given the evidence of Ms. Whittaker and of Messrs. Kain, Nakai and Lawrence, the Board remains convinced that these systems simply cannot realize the economies of scale enjoyed by larger systems. The problems associated with the operation of a small system simply do not vanish into thin air once a system crosses the 1,000 premises line.

The scaling in of the tariff is a creation of the Board, not of regulation. It can be tailored to whatever the Board deems appropriate, so long as the approach taken is consonant with the general precepts of the *Act*. There is one aspect of this mechanism that could be improved.

Some retransmitters reported two or more large systems serving no more than 6,000 premises within a LSA. While the concerns of small systems find some reflection in LSAs comprising no more than 6,000 serviced premises, it is going too far to allow some relief based on the as yet uncertain notion of system. The current approach also results in an unfair competitive advantage for MATVs. A cable operator who must pay 70¢ will find MATVs located within its service area paying 20¢ or 25¢ (few MATVs serve more than 2,000 premises).

For these reasons, the tariff is adjusted so that the rate for any system other than a small system is a function of the number of premises served in the LSA, whatever the number of systems may be within that LSA.

E. ADJUSTMENTS AND DISCOUNTS

The 1990-91 tariff provides for a certain number of discounts for certain types of signals and

premises. These were examined again during these proceedings. Other discounts were also requested, as well as a surcharge for superstation signals. These issues are canvassed hereinafter.

i. Superstation Surcharge

Superstations are American broadcast television stations whose signals are beamed to retransmitters via satellite. The CRTC authorized their carriage in November, 1987; American authorities delayed permission for their distribution in Canada until September, 1991. Consequently, this hearing is the first in which the impact of these stations on the distant signal market must be taken into account. Some collectives ask that the Board do so by setting a separate rate for them. Other parties argue in favour of factoring their impact into the general rate structure.

Those who favour a separate rate advanced several arguments: first, that with superstations being such a new product on the Canadian market, their penetration has probably not stabilized and is likely to increase; second, that superstations are different because they are carried mostly on discretionary tiers and because their programming is different; third, that the CRTC and cable companies already treat these signals differently; fourth, that all retransmitters, irrespective of their size, are allowed to pass through costs associated with superstations, including retransmission royalties, without CRTC approval; and fifth, that a separate superstation royalty is more equitable for operators carrying few or no superstations.

The Board chooses to factor the impact of superstations into the general rates for several reasons.

First, some systems are allowed to carry superstation signals on basic services. A separate royalty would make it more difficult for them to continue to do so. As was noted earlier, stating that these systems are allowed to pass through any costs associated with their basic service simply begs the question of whether they are in fact able to do so.

Second, the Board finds that any differences between superstations and other discretionary distant signals, which account for almost one million signal instances, are insufficient to warrant their being treated differently. If superstations and other discretionary distant signals were granted such a rate it would open the door to assessing different values for various categories of signals. The Board has already rejected this approach in Section V.B.2. The reasons for doing so here remain the same.

Third, a separate superstation tariff would unnecessarily disrupt existing cable services. It would be a disincentive to carry superstations, which could have a detrimental effect on the carriage of Canadian pay services, contrary to the CRTC objective.

Finally, arguing that a separate surcharge would be fairer to operators carrying few or no superstations parallels the argument that carriers of few basic distant signals are not being treated fairly under the current tariff structure. That argument has not been advanced.

Certainly, information made available to the Board on the penetration of superstations was fragmentary and less reliable than that on other distant signals. There is, however, sufficient information for the Board to come to a reliable estimate of what may happen to those signals

over the life of the tariff.

The number of superstation signal instances has grown from some one million in September, 1991 to approximately 1.6 million in May, 1992. There is reason to believe that further increases in the number of superstation signal instances will be less spectacular. Linkage requirements impose severe limits on their eventual penetration: there cannot be a large increase in superstation signal instances without an increase in pay television penetration. Yet, in English Canada, in the period between September and December, 1991, the number of subscribers to pay television dropped from 724,000 to 711,000.

CCTA tried to demonstrate that the maximum theoretical penetration of superstations was 2.3 million instances.[43] Mr. Pezarro pointed out that superstations are an option with pay television, and that as of December, 1991 42 per cent of pay subscribers did not subscribe to superstations. Taking into account linkage requirements, channel capacity and the behaviour of subscribers, he stated that a realistic subscription level was 1.5 million signals for the next couple of years. Given the evidence now available, it would appear that the May, 1992 figure of 1.6 million provides a reliable estimate for the life of the tariff.

ii. Francophone Markets

Much time was spent during these proceedings debating whether retransmitters operating in francophone markets ought to pay a separate, lower rate for retransmission rights.

a. Differences between Francophone and Other Markets

The record shows that on the whole, parties seemed content to use Quebec as a proxy for all francophone markets, and the rest of Canada as a proxy for other markets. The evidence filed at this hearing and the testimony of Ms. McLaughlin, Messrs. Grant, Martel, McKie, Paradis, Pezarro and of Professors Janisch and Trudel make it abundantly clear that retransmitters operating in the province of Quebec operate in an environment different from that of other retransmitters.

A Different Market Environment

The retransmission market in Quebec is very different from that of the rest of Canada in at least three important ways.

Cable penetration patterns are distinct.[44] The penetration rate in Quebec remains consistently lower than in the rest of Canada; however, the proportion of English-speaking households passed in the province who subscribe to cable is the same (78 per cent) as in Ontario. Also worthy of note is that the penetration of the (mostly English) discretionary services is one fifth of that in the Maritimes or the Western provinces, and one third of that in Ontario. Mr. Paradis suggested that

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[43] This corresponds roughly to three superstation signals offered to each current pay television subscriber.
[44] The data referred to in this paragraph is found in the transcript, at pp. 4682-4.

the reason for these differences was largely the primarily English language offerings on cable.

Supply patterns of distant signals also differ. Quebec subscribers receive fewer distant signals than other Canadians.[45] Some of this can be traced to geography: Ontario subscribers also receive fewer distant signals than the average. A further interesting comparison is the proportion of distant signals received that are in the language of the majority. In Quebec, less than one-fifth of distant signal instances are of French signals; by contrast, more than 90 per cent of the distant signal instances in the rest of Canada are of English signals.[46]

Finally, viewing habits are very different. Quebec residents watch more television than other Canadians; however, English language stations account for only nine per cent of total viewing there.[47] Distant signal viewing is lower. The figures advanced by various parties may differ; however, they all confirm that whether one looks at prime time, off-prime or full time, distant signal viewing as a percentage of hours tuned to cable is between 14.9 and 17.7 per cent for Canada, 18.3 and 21.5 per cent for Canada excluding Quebec, and only between 4.4 and 5.2 per cent in Quebec.[48] Again some of this difference can be traced to geography: the subscriber who receives no distant signals cannot spend any time watching them. However, it is reasonable to assume that language also plays a part: in Quebec, viewing on distant signals is shared more or less equally between English and French signals, even though English distant signal instances account for more than 80 per cent of all distant signal instances.[49]

A Different Regulatory Environment

The Government criteria require the Board to take into account "the effects on the retransmission of distant signals in Canada of the application of the *Broadcasting Act* and regulations made thereunder". According to the record of these proceedings and especially the testimony of Professor Trudel, the *Broadcasting Act* acknowledges the different realities that confront retransmitters operating in different markets. The Board is of the opinion that two sets of provisions are germane.

The first two statutory provisions tend to affirm the differences between English and French broadcasting operations.

Paragraph 3(1)(c) of the *Broadcasting Act* declares that "English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements."[50] This is phrased as a statement of fact rather than as an objective to be pursued. The record of these proceedings confirms that this is indeed the case.

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[45] This is a change from 1989. See note 19, *supra*.
[46] Exhibits CRC-56 and CCC-99.
[47] Exhibit CCTA-24.
[48] Exhibit CCTA-6.
[49] The proportions are 53 per cent English, 47 per cent French: transcript, p. 6809.
These figures can be derived from Exhibits CCC-99 and CRC-56.
[50] This includes retransmission of distant signals: see the definition of "broadcasting" in s. 2.

Paragraph 5(2)(a) of the *Broadcasting Act* also requires that in regulating the broadcasting industry, the CRTC have regard to "... the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate." This is something the CRTC has done repeatedly in the past as far as retransmitters are concerned. Those who operate in francophone markets are subject to different carriage requirements;[51] until recently, for example, they were subject to a "distribute one, distribute all" principle for French specialty services; this did not apply to cable operators in other markets.

In at least one respect, however, the *Broadcasting Act* appears to call for an equalization of access to services in both official languages. Paragraph 3(1)(k) of the *Act* sets out the objective that "a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available."

b. Proposed Approaches

Parties put forward three approaches which they submit would address the particular circumstances of francophone markets. CCTA, supported in this by Quebec and Ontario, suggested that retransmitters in francophone markets be treated differently from other retransmitters. For their part, CCC and CRC argued that the Board ought to focus instead on the lower value of signals in a minority language.

CCTA proposed that retransmitters in francophone markets receive a discount to reflect the lower viewing of distant signals in those markets. This would benefit any retransmitter in a market where more than 25 per cent of the population is francophone, and reach a maximum of 75 per cent in markets where 85 per cent of the population is francophone. CCTA did not propose a specific scale.

CRC suggested that the lower value of signals in the minority language in all markets could be reflected in the royalty rate payable throughout Canada. It estimated that a maximum 12.8 per cent discount would reflect the lower value of all minority language signals throughout Canada.[52] It argued that this discount was already built into the packaging discount the Board had used in the 1990 decision.

CCC did not recommend charging a separate rate in francophone markets. It stated that it did not object to the Board doing so, so long as copyright owners are fairly compensated on an overall basis. It proposed using a "demand factor" that would lower the price in francophone markets but also raise it in the rest of Canada. The demand factor takes into account the population and its viewing habits as well as the number of distant signals received in each province in Canada. It summarizes these three factors in two numbers, which are then reduced to one ratio. Population contributes to both the numerator and the denominator of the fraction.

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[51] CRTC Public Notice 1987-261, filed as CCC-52.
[52] Exhibits CRC-56 and CRC-57. CRC made a computational error; the correct discount would be 12.2 per cent.

c. Conclusions

During the 1990-91 tariff proceedings, parties chose not to lead evidence on the different circumstances of retransmitters operating in francophone markets. No doubt, the intensity of the current debate results in part from the nature of the tariff formula and the adoption of the Government criteria.

The current tariff structure is independent of the number of signals carried and explicitly ignores use (or viewing) as a criterion for liability.[53] However, the Board has already set different rates for certain premises, where it concluded that distant signals are less valuable to them than to the average residential subscriber. The same could be done where a readily identifiable market displays special characteristics which render distant signals, on the average and whatever their number, less attractive to users in that market. The issue to be addressed, then, is whether it is sufficiently clear that distant signals are less valuable in francophone markets and if so, how to take account of this.

The evidence filed during these proceedings strongly favours allowing retransmitters who operate in francophone markets to pay a rate different from those operating elsewhere. The environment in which they operate is different in several respects, differences best distilled in two statements found in Ontario's argument: "... the *Broadcasting Act* clearly acknowledges the different characteristics of francophone and non-francophone markets," and "... cable operators in francophone markets face unique challenges in attracting and retaining subscribers."

The most noticeable response to the 1990-91 tariff was the dropping of distant signals in Quebec. A collection of circumstances unique to Quebec probably determined this outcome. Some retransmitters serve many premises, which allowed for substantial reductions in their royalties. As they were close to the border, most of the American signals they carried were local. Finally, the language of the majority of subscribers was not that of the signal dropped. This in itself is evidence that the rate was too high for those markets. A reduction in the rate may in fact bring about a restoration of the service to its original level.

There remains then the question of how to account for these differences. Unfortunately, the approaches of the parties suffer from several weaknesses.

The suggestion of CRC cannot be used since it is based on a single rate for all markets. Furthermore, the evidence makes it clear that the minority language distant signal phenomenon is important in francophone markets and not in others. Under such circumstances, the phenomenon cannot simply be factored into the national rate.

The approach proposed by CCTA suffers from several defects. It does not suggest to the Board what the discount scale ought to be. Being a scaled discount applied to a scaled rate, it is overly complex. Finally, it rests on a correlation between viewing of distant signals and the value of

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[53] This is probably what CCC has in mind when it states that the tariff structure involves a large measure of "cross-subsidization."

those signals for the retransmitter. A significant difference in viewing from one area to another may be an indication that a signal is less attractive to consumers and therefore, less valuable to the retransmitter. However, no perfect correlation exists between viewing and value. There is value in the mere supply of the signal, whatever its viewing.

At first glance, using the "demand factor" appears an attractive solution. This tool has its advantages. It confirms that even if they were to receive the same average number of distant signals, subscribers in Quebec would probably watch distant signals less than other Canadians.

The demand factor can generate peculiar effects, mainly because it is not a linear function of supply and viewing. Its properties are not straightforward and were not fully explored. It can fluctuate dramatically in smaller markets: a modest change in supply or viewing patterns in the rest of the country would be sufficient to change greatly the demand factor for Prince Edward Island or Newfoundland.

The collectives assert that if a lower, separate rate is set for francophone markets, they ought to be "kept whole," if the rate goes down in one market it must go up in another.[54] The Board does not set a quantum. It sets a price and estimates the quantum. CCC implies that had the Board set a separate rate for francophone markets in the 1990-91 tariff, the rate for the rest of Canada would have been higher than 70¢. It is just as plausible that had this evidence been produced at that time, the maximum rate would have remained the same and the total royalty collected would have been less than it was. The Board was, and is, of the opinion that 70¢ is a fair maximum rate within the current tariff structure.

CCC's demand factor supports a discount of at least 45 per cent; however, this number depends on sample data and will vary from year to year. CCTA, on the basis of viewing, asked for a discount of 75 per cent. That last figure is too high if, as the Board finds, there is no strict correlation between viewing and value. For the sake of simplicity, the Board prefers to set a straight 50 per cent discount for all francophone markets.

Even though a separate rate is set, the tariff must remain simple to administer, and be set out in terms that are familiar to the industry. For this reason, the tariff specifies, as the parties suggested, certain markets deemed to be francophone. Also, the Board chose to parallel the definition of francophone markets used by the CRTC.

iii. Duplicate Signals

All parties agree on some discount for systems carrying only duplicate distant signals. They disagree on its extent where more than one such signal is carried. All collectives but one propose a single discount of 75 per cent if the only distant signal carried is a duplicate. CCTA suggests that some discount be available in all cases where only duplicates are carried.

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[54] CCC's demand factor will not achieve this. In this particular case, the factors of .55 for Québec and 1.077 for the rest of Canada reduce royalties by about five per cent.

As Ontario pointed out, this discount serves two purposes. It recognizes the intrinsically lower value of distant duplicates, and it avoids discouraging their carriage, with the resulting loss of service to subscribers. Under these circumstances, the Board is of the opinion that the discount ought to be 75 per cent where the only distant signal carried is a duplicate, and 50 per cent in all other cases where duplicates are carried as the only distant signals, whatever their number.

iv. Discounts Applicable to Certain Types of Premises

The parties, and especially the objectors, argue that certain types of premises present characteristics that make distant signals inherently less valuable to them. In this section, the various discounts proposed for such premises are reviewed.

a. Hospitals

All parties agree to maintain the 75 per cent discount applicable to hospitals and other health care facilities.

b. Hotel Rooms

The occupancy rate of hotels has dropped since the 1990-91 tariff hearings.[55] Nevertheless, relying on the prediction, contained in CCTA's exhibit, that occupancy rates will increase for 1992 and beyond, the collectives suggested that the discount be maintained at 35 per cent.

CCTA asked for a discount of 75 per cent. It based this request on the lower occupancy rate and on the argument that hotel room occupants are not there to watch television. Ontario supports a 50 per cent discount which it says corresponds to the vacancy rate. Ontario did not indicate the source on which this number was based.

The statement that television viewing is lower in hotel rooms than in residential premises remains unsupported. It is therefore unnecessary to debate whether it is even relevant. On the other hand, the evidence on which CCC is relying does not take into account the most recent available occupancy rate and remains speculative. For this reason, the Board relies instead on the actual figures available for 1991 and sets the discount at 40 per cent.

c. Educational Institutions

CCTA asked for a discount of 75 per cent for schools or educational institutions. To support this, it alleged that only limited use is made of television in the classroom. Ontario supported the proposal for two reasons. It considered it "as a fair gesture for the limited use of television services for educational purposes." It also stated that since cable operators typically offer their services to schools at no cost, the discount would reflect the operators' perspective of the value

[55] Exhibit CCTA-29.

of distant signals to schools.[56]

For its part, CCC raised three objections. It submitted that copyright owners should not be required to subsidize the educational sector. It pointed out that there was no evidence on the actual use of television in the classroom. It finally stated that the wording of any discount provision would raise serious definitional problems.

The Board agrees with CCTA and finds the arguments of CCC unconvincing. The issue here is not one of subsidization but rather the fair price that should be paid for distant signals in educational institutions as compared with other users. Even though the evidence on this could be better developed, the Board is convinced that the use made of distant signals in a schoolroom is inherently different. Distant signals provide, first and foremost, home entertainment. They include a minimal educational component: TVOntario and Radio-Québec account for no more than one per cent of distant signal instances. Finally, the Board does not consider the problem of defining an educational institution so difficult as to prevent the use of the discount. The Board finds that the same discount as for health facilities is warranted here.

d. Commercial Establishments

CCTA asked for a discount of 75 per cent for commercial establishments. To support this, it alleges the limited use of television in these establishments, and states that the proposed level of royalty corresponds to actual subscription rates for such establishments.

Again, CCC pointed to the lack of evidence on this issue, and sees no justification in providing a discount where distant signals are incidental to a profit making activity. For its part, Ontario, apparently relying on the testimony of CCTA's own witness noted that commercial subscribers negotiate special rates at the discretion of cable operators.

The evidence that distant signals would be less valuable to premises in the class as a whole is unconvincing. Many commercial establishments rely on distant signals to promote their products (electronics stores) or to draw a particular clientele (sports bars). Under the circumstances, the Board declines to grant a discount for those premises.

e. Bulk Arrangements

CCTA asked for a discount for bulk subscribers, such as apartment buildings, rooming houses, or university residences, equal to the national rate of cable penetration. It argued that bulk subscribers pay lower cable fees than residential subscribers, and that in the absence of bulk service those individuals currently enjoying those services would subscribe at a rate no higher than the national penetration level.

CCTA has not made a strong enough case to support its position. Bulk arrangements are at the

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[56] There was no evidence that all operators supply cable to schools free of charge. However, Mr. Pezarro did state that this is the case with all systems operated by his company.

discretion of cable operators. According to CCTA's own witness, the decision to grant a discount is an economic one, based on factors such as competition or the risk of theft of the service. Nothing in the evidence justifies a retransmitter paying less under such conditions for the distant signals it uses. Economies of scale might, in and of themselves, justify the lower fees paid by bulk subscribers.

F. THE TERM OF THE TARIFF

Most of the parties support a three-year tariff. They point out that a two-year term would require collectives to file new proposals by June 30, 1993. They add that frequent hearings are both costly and time consuming: Ms. Peacock stated that one of the reasons why CCC has not yet made disbursements is the time spent preparing for these proceedings.

Some collectives asked for a two-year tariff. They argued that a longer tariff reduces the usefulness of the test year data. CRRA pointed out, for example, that the viewing share of American commercial networks could increase in the next year as a result of a recent relaxation of FCC rules concerning network entertainment productions.

The Board accepts the arguments made in favour of a three-year tariff. Furthermore, while there is no remedy to the disadvantages of a short-lived tariff, there is one to the incongruities of a long-term one: the *Act* already expressly provides that should there be material changes in circumstances during the term, a party is free to apply for a variation in the tariff.

G. THE ADJUSTMENT FORINFLATION

The collectives asked that any multi-year tariff be adjusted by a factor equivalent to the rise in the CPI. This request raises two separate issues. Should the tariff be adjusted to reflect changes in market prices; and if so, on which index should this adjustment be based?

CCC argued that since the new tariff will be in force for more than one year, an inflation adjustment is appropriate, even if the Board decided against it in the 1990 decision. It did not comment on whether in the current deflationary environment, an automatic prospective adjustment is still warranted. CRC added that "freezing" retransmission rates for three years may unjustly enrich cable companies. For its part, CCTA submitted that on the issue of inflation, Mrs. Farrow did not say whether or not an adjustment was warranted, and confined her comments to what the appropriate index might be (she appeared to accept that one was required). Mrs. Farrow did state that these adjustments protect the real value of payments and that they are "normal practice."

The Board has already expressed the opinion that the rate of 70¢ remains appropriate. This takes into account price increases that have occurred since the 1990 decision. Given the current economic climate, where inflation has now been reduced to historically low levels, the Board finds it inappropriate to grant any adjustment for the life of the tariff. It is therefore unnecessary to choose an appropriate index.

H. PROJECTED REVENUE FROMTHE TARIFF

The Board estimated that the 1990-91 tariff would have generated $50.93 million in 1989. According to CCC, the actual tariff collected in 1990 was $47.77 million. On the basis of the figures in the 1991 database, the Board estimates that the old tariff would have generated $44.76 million in 1991 and the new tariff $41.98 million.[57]

I. THE ABILITY OF THE INDUSTRY TO BEAR THE ROYALTY PAYMENTS

In the 1990 decision, the Board expressed the opinion that the industry would be able to absorb the retransmission royalties and continue to function. During these hearings parties submitted further evidence on this issue. Evidence relating to small retransmitters and large retransmitters serving no more than 6,000 premises has already been addressed.[58] The rest is reviewed here.

The Board disagrees with CCC's argument that the Board ought not be concerned with the industry's ability to pay. A rate cannot be set so high that it jeopardizes the existence of the industry. Furthermore, in a regulated marketplace where accessibility to a good is a priority, the ability to pay may well impose a ceiling on the price that can fairly be set.

For the reasons set out earlier, the Board is of the opinion that a maximum rate of 70¢ remains fair. The evidence of Mrs. Farrow offers comfort that large systems serving more than 6,000 premises can pay this royalty.

The reports filed by Dr. Patterson and by Ms. Leaney and Mr. Ashtaryeh have little to do with ability to pay. As "poorly founded and overly optimistic" as the Board's belief in 1990 about the industry's ability to pay may have been, nothing indicates that the industry has in fact suffered unduly from the imposition of the tariff. As stated earlier, there is no evidence that retransmitters find the tariff punitive.

Dr. Patterson's report also pointed out that the rate adjustment mechanism used by the CRTC is ill-suited to dealing with the large once only change the imposition of the royalty payment in 1990 represented. Again, this is of little relevance to the exercise the Board is called upon to perform. The Board is preoccupied with the ability of cable operators to handle the burden of the royalties. It is beyond its mandate to set profitability levels or to ensure that they are maintained.

The rest of the reports filed by the CCTA seem merely to state the rather obvious proposition that royalties entail a cost and reduce profits. The only use of such evidence is to bolster the argument that any price above zero reduces profitability and is therefore unfair. CCTA has not advanced such a proposition.

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[57] The first figure appears on page 43 of the 1990 decision (*p. 38 in this volume*), the second in CCC Reply, page 22. The assumptions and calculations underlying the last two can be found in Appendix III.

[58] See sections V.C.2 and V.D.

VI. THE ALLOCATION OF THEROYALTY AMONGST THE COLLECTIVES

A. SOCAN

Music is pervasive in all programming. As a result, SOCAN's share of retransmission royalties cannot be determined using viewing or supply. In the 1990 decision, the Board used the ratio between the cost of music and the cost of programs to Canadian commercial and non-commercial stations, weighted by the number of distant signal subscribers to determine SOCAN's share.

In these proceedings, CRC and SOCAN were again the parties most involved in the issue of the share that music should attract. Both suggested that the Board take the approach used in 1990, with a number of adjustments.

First, CRC argued that the cost of music should be added to the programming costs that serve as the denominator in the ratio. SOCAN agreed and the Board shares the parties' view.

Second, CRC asked that the Board use the ratio of programming costs for American broadcasters, rather than substituting a Canadian ratio. By contrast, SOCAN suggested using only the ratio of programming costs of private Canadian broadcasters, because they operate in the same business and regulatory environment as private cable operators retransmitting broadcast signals. The same cannot be said of American broadcasters. The Board accepts SOCAN's arguments.

Third, SOCAN suggested that the ratio be established using an average over a period of five to twelve years, rather than a test year. It stated that using a single year makes the ratio less reliable and fails to reflect cyclical trends. Here as elsewhere, the Board prefers to use a test year. The evidence establishes that the current tendency is for the ratio to go down. This makes the ratio for the most recent year a better predictor for the life of the tariff than the older ratios. A multi-year analysis would also fail to account for the structural change that occurred when the Copyright Appeal Board lowered the licence rate from 2.4 per cent to 2.1 per cent.

Finally, SOCAN asked that the denominator used to establish the ratio include only costs for creative inputs; this would exclude for example, compilation costs, expenses associated with programming that is never broadcast, amortization of films and series as well as costs incurred for production services sold. It also asks for the removal from the denominator of excess programming expenses resulting from the regulatory environment in which the Canadian broadcasting industry operates. The Board rejects all these adjustments but one. With the possible exception of production services sold, which CRC agreed could properly be excluded from the denominator, the evidence as to the importance of the first series of costs was speculative and, in the Board's opinion, cannot be used as the basis for an adjustment. The Board is also of the opinion that programming costs that are incurred because of the Canadian regulatory environment ought to be included. The Board uses the comparison between Canadian cable operators and Canadian private broadcasters precisely because they share the same regulatory environment. That environment cannot simply be ignored; it is part of their reality of doing business.

The ratio for Canadian private commercial broadcasters is 3.56, based on total programming expenses. This number is reduced to 3.43 when music fees are added to the denominator. Adjusting for the costs of production services sold, the share of SOCAN becomes 3.55 per cent. No further adjustments are warranted.

B. OTHER COLLECTIVES

During these proceedings, one collective questioned the merits of the Board's supply and viewing hybrid approach discussed in Section I.C and asked that a pure viewing approach be adopted. Other collectives suggested a series of adjustments to the hybrid approach. These are reviewed in turn.

i. The Hybrid Approach

CCC advocated allocating royalties solely on the basis of viewing. It expressed the view that the only relevant criterion for allocation was the relative commercial value to cable operators of different programming and that this commercial value was linked to subscribers' viewing behaviour.

For the reasons given in the 1990 decision, the Board retains its hybrid approach as the basis for allocation. The Cabinet criteria can only serve to reinforce the reasonableness of this approach.

This approach does not discriminate against non-Canadian copyright owners. As was stated in the 1990 decision, the distinction is made between signals, not between copyright owners. Works owned by Americans are included in the Canadian pool when retransmitted on CBC, while works owned by Canadians are included in the American pool when retransmitted on PBS.

The Board also remains of the opinion that, within the respective pools, viewing provides the best method of allocating the royalties collected, so long as the data documenting viewing is adequate. It is unconvinced by CRC's attempts to establish a comparison between the objectives set out in the *Broadcasting Act* and the requirements imposed by American legislation on PBS stations, in support of the creation of an additional pool for PBS. Those requirements are imposed for the American market and reflect American concerns. They do not come close to the sort of societal choices that Canadian broadcasting policy represents, and that the Board must take into account under the terms of the government criteria.

ii. Viewing Data

Two sets of viewing data were filed by CRRA and CCC. Both were based on statistics compiled by BBM. CRRA used only the data for the Fall of 1990; CCC filed information for sample weeks in the Spring, Summer and Fall of 1990.

Viewing statistics are inherently different from the cable and signal data, which is based on a complete enumeration of all cable operators. Viewing statistics are based on samples: only some

viewers participate, and only during the sweep periods.

Sample information is subject to variation, from either chance or bias;[59] consequently sample statistics are often accompanied by confidence limits, or estimates of how the data might vary from sample to sample. This information was not provided in evidence, even though some variability could be expected, if only as a result of the choice of sweep weeks. MLB noted that the American CRT now asks for confidence limits on all results generated from sample data. The Board is sympathetic to this approach.

As Mr. Gordon noted during his testimony, the reliability of a sample is a function of its absolute size, not of its proportional size to the universe being sampled. As a result, one can be fairly confident of the reliability of the estimate of the behaviour of viewers, although not necessarily of the representative character of the programs contained in the weeks surveyed.[60] For example, there is a risk that viewing statistics are affected by the unavailability of certain types of programming from time to time.

Another aspect of the viewing data caught the Board's attention during these proceedings. CCC had consolidated individual viewing information into household statistics, so that both the supply and viewing information were in the same units of measurement. The Board asked whether this might change the distribution of viewing amongst the collectives in some way. In response, CCC prepared Exhibits CCC-111 to 114. These are separate tables comparing the viewing shares of collectives using individuals as well as households. Keeping in mind that the viewing figures are subject to sampling variation, the differences between the two sets of figures appear unimportant: using either generates almost identical allocation results.

The Board concludes that, subject to certain reservations addressed later in this section, viewing data continues to serve the purpose. Mr. Gordon's testimony establishes that they are on the whole reliable; furthermore, the Board's opinion is that the underlying methodology of Statistics Canada is credible.

The Board also chooses to use the data provided by CCC rather than that filed by CRRA, if only because the information covers three sweeps rather than one. This allows better account to be taken of seasonal variations. It also gives a starting point for the necessary correction for MLB.

This having been said, the Board finds it preferable, for the purposes of allocation, not to use the Summer sweep data. The methodology used for this sweep is not comparable to that used for the other two, more important, ones. It also appears that the viewing and programming patterns in those periods are probably much closer to year-round patterns than those exhibited during the Summer. This, as will be seen, allows the viewing data to be used more consistently, with only one major correction.

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[59] Actual viewing may also change from the time the data is compiled to the time the tariff operates. This variation, which also affects supply, cannot be readily avoided given the approach the Board has taken.

[60] The issue addressed here is the absolute size of the sample; this comment does not deal with the risks of inherent biases in the choice of participants. Certain groups may tend to answer the diary less accurately than others, and other groups, such as children, may not even be able to answer themselves.

While no party presented an alternative general method for allocating royalties amongst all collectives, some adjustments were suggested. These are reviewed hereinafter.

iii. Proposed Adjustments to the Viewing Approach

a. Underreporting

Mr. Fuller compared ratings generated using the diary method with those obtained by using people meters. He found a difference of 25 per cent between the two in the case of PBS and concluded that the diary method underreported actual viewing. On the strength of this, CRC asked for an adjustment to its viewing share.

The Board declines to make this adjustment. Mr. Linsdtrom stated that the bias in the diary method is systematic. He conducted a study similar to Mr. Fuller's in the same markets but for American commercial stations and found an underreporting of over ten per cent. Mr. Fuller's study focused on markets with many more television offerings than are usual in Canada; Mr. Lindstrom pointed out that the tendency in diaries for underreporting of signals that attract lower viewing increases with the number of television offerings. Given the differences in Canadian and American viewing patterns and markets, the Board is not convinced that PBS viewing figures in Canada would be affected more than other signals by the use of diaries.

b. The Heavy Viewer Phenomenon

CRC suggested that account be taken of the possibility that while every cable household generates an equal amount of royalties, so-called "heavy viewing households" influence allocation more. CRC's argument is motivated by two, separate, preoccupations.

The first is that there may be differences in the shares generated by the use of individual rather than household viewing data. The Board has concluded that the two approaches produce similar results.

The second is that certain programs may attract the viewer who spends much more time watching television than others do. At the theoretical level, the difficulty raised by CRC may be valid. In practice, however, the works managed by a collective would have to be both clustered on distant signals and watched more frequently than other programs before the heavy viewer could affect allocation. No evidence to that effect has been presented to the Board.

c. Extraordinary Events

Viewing data tends not to capture the effects of extraordinary events. The Olympic Games are a prime example. CRRA asked that an adjustment be made for this. There was no attempt to show what impact these might have had on the supply and viewing of television programs in Canada. Therefore, the Board refuses to make this adjustment.

d. Baseball

Viewing data available for these proceedings captures baseball only during the Summer. Furthermore, MLB pointed to certain characteristics of the available programming during the Summer sweep that suggest that even for that period, its viewing share was underestimated. MLB attempted to correct the combined sweep figures to account for the special aspects of its programming. The Board, in contrast, used the Summer sweep figures contained in CCC-112 to estimate annual viewing. It has set the allocation for MLB as follows:

TABLE I / TABLEAU I
IMPUTED VIEWING OF MLB'S PROGRAMMING, BASED ON SUMMER SWEEP, 1990
(In millions of fifteen-minute impressions)

ÉCOUTE ANNUELLE IMPUTÉE À LA LBM SUR LA BASE DU SONDAGE D'ÉTÉ DE 1990
(en millions d'impressions de quinze minutes)

Actual viewing of MLB programs (Summer sweep)	1.858	Écoute réelle de la LBM (sondage d'été)
Adjustment to account for the lower number of games in the second Summer sweep week	0.613	Rajustement au titre du nombre inférieur de parties dans la deuxième semaine du sondage d'été
Adjustment to account for the lower number of games during the sweep[61]	0.500	Rajustement au titre du nombre inférieur de parties pendant le sondage[61]
Total imputed viewing	2.971	Écoute totale estimée
Since baseball is available only seven months of the year, this figure can be scaled down by 7/12	1.733	Rajustement (7/12) pour tenir compte du fait que le baseball n'est diffusé que sept mois par année

The final figure is the imputed viewing of MLB programs during the Summer sweep. Since there were 108.345 million fifteen-minute viewing impressions recorded during that time, MLB's share is set at 1.60 per cent.

The Board finds this approach both compatible with the methodology put forward by MLB and easier to use.

The Board makes no adjustment to account for superstation viewing. The information on those stations (and especially on the viewing they attract) remains too scant for the Board to abandon its use of the test year for those purposes.

e. Uncounted Short Programs

The diaries do not record programs less than five minutes long. To remedy this lacuna, CBRA

[61] This is a further adjustment for week two, based on actual games that were broadcast: see the testimony of Mr. Alworth, at pp. 3598-3599. It accounts for the lower number of games on distant signals because of the break for the All Star game.

undertook a survey of the program logs of a sample of twenty five commercial Canadian stations. The study then identified the short programs and attributed viewing to them according to the diary records of the programs in which they were embedded. On the strength of this study, CBRA claims an extra six per cent of the allocation for these programs, and suggested a mechanism to adjust the overall allocation to make room for them. CRRA and BBC also made claims for their small programs, although neither had attempted to measure them.

CBRA has given a reasonable estimate of the frequency and duration of these types of programs. The concern of the Board is whether such short programs should share in the royalties paid by cable operators. They are copyrighted works retransmitted on distant signals; however, the Board finds that any value they might have is negligible, because they are less attractive to distant viewers than the programs they precede, interrupt or follow.

News breaks, local weather reports, promotional or public interest announcements, commercials and the like are inherently less valuable to the distant signal viewer or retransmitter than to the broadcaster or local viewer.[62] The Board shares CRC's view that it is very unlikely that Saskatchewan viewers value Detroit traffic breaks as much as the movies they interrupt.

Furthermore, it is reasonable to assume that on the whole, viewing would drop during those short programs even in local markets. The testimony of Mr. Lindstrom that he saw no reason not to ascribe the same viewing to the embedded program as to the reported program, can be set aside. He based his conclusion on viewer laziness rather than interest, something which can only reinforce the earlier comment about lack of value. Watching these programs is incidental to the viewing of the main program. On the whole, viewers do not decide to watch an insert, a news break or a commercial; they are subjected to them. Therefore, the Board rejects CBRA's claim.

f. Changes in the Regulatory Environment

CRRA asked that its share of royalties be increased to reflect an expected increase in in-house productions by the U.S. networks over the next few years. This claim cannot be entertained. The Board finds that network plans to buy or produce programming are not a compelling enough reason to justify abandoning the principle of relying on the data for the test year.

g. Adjustment for Value-Beyond-Viewing: the Study of PBS by Decima

During these proceedings, CRC asked again that the allocation for PBS distant signals be equal to its share of supply. In an attempt to bolster its position, CRC ordered from Decima Research a constant sum survey whose object was to establish the price viewers would be willing to pay for various American distant signals.

A number of households receiving both PBS and at least one other U.S. signal as distant signals were sent an information package containing the schedules of the relevant signals. They were

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[62] CBRA did not claim royalties for commercials. However, there would be no reason under the approach they suggest to treat those works any differently.

then asked in a telephone interview how they would allocate an imaginary fixed budget among those signals. The number of dollars always corresponded to the number of American distant signals received by the subscribers. The Decima study concluded that cable subscribers were prepared to pay at least as much for the PBS signal as for the other American signals. CRC then compared this result to the proportion of time spent watching PBS and concluded that viewing underestimated the subscribers' valuation of the signal.

Whatever its merits, the Decima study simply fails to address what the Board considers to be the real issue. The Board is required to allocate royalties generated by the tariff among the owners of programs retransmitted on distant signals. For reasons explained earlier, it first allocates royalties into supply based pools of Canadian and American signals. The Board continues to be of the opinion that within those pools, viewing represents the most equitable measure of use and thus, of value of copyright materials and should be used as the tool for determining the remuneration to be received by the owners of the rights in these programs. Furthermore, the Board does not believe that an allocation to PBS based on its supply would be fair to rights owners in programs on other American distant signals, whose works may attract more viewing than programs on PBS. For these reasons, the Board rejects the approach put forward by CRC.

h. Adjustment for Value-Beyond-Viewing: Sports

FWS and MLB also argued that simple viewing statistics do not reflect different preferences, intensities or willingness to pay for the different programs on distant signals.

Broadcasters and specialty service operators pay a premium for sports programming. In the Board's opinion, there are two reasons for this, neither of which it considers relevant for the purposes of allocating Canadian retransmission royalties.

First, sports attract a premium because it delivers viewers in the local market. This is reflected in the networks' choice of games to be broadcast in different parts of the United States and Canada.[63] The witnesses of the sports collectives agreed on the existence of a "home team" advantage.[64] There is no reason to believe that sports programming broadcast on distant signals shares the characteristics for which people pay a premium on local signals. Indeed, one would assume that if sports programming shown on distant signals shared in this higher value, local broadcasters to these markets would purchase the rights to those programs.

Second, sports attract a premium price because sports audiences include a sub-group of viewers who are difficult to reach through other programming and who exercise substantial direct influence on spending decisions. The more a unit of advertising time can be sold for, the higher the price the broadcaster or the service supplier can pay for programming. The Board does not believe that an advertiser's marketing decisions should govern allocation.

It is also true that the price paid by cable operators and by cable subscribers for sports services

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[63] Mr. Staple, at p. 2733; Mr. Alworth, at. p. 3659.
[64] Mr. Wussler, p. 2948-9; Mr. Alworth, p. 3614; Professor Braunstein, p. 3786.

tends to be the highest for all specialty services. In the Board's opinion, the reasons for doing so are linked to the economic factors mentioned above, and have little to do with the right to be remunerated for the retransmission of programs on distant signals. The Board continues to prefer to link allocation to viewing rather than to expenditure decisions.

C. DISPUTED PROGRAMS

In the 1990 decision, the Board stated that it would consider, in the absence of evidence to the contrary, that the author or first owner of the program (usually the producer) is the owner of the copyright. The disputes that arise in these proceedings make it necessary to further articulate this principle.

i. The Principle

Licensing agreements can be drafted in very broad terms. The issue is then how clear language ought to be to transfer the entitlement to retransmission royalties.

The Board is of the opinion that the distributor should not lightly be entitled to collect royalties for a right it cannot sell because it is governed by a compulsory licensing scheme. Absent clear language or a necessary implication to the contrary, a distributor is entitled to share in the revenues that it can generate through its own licensing efforts and to nothing else. The kind of language that would achieve such a transfer can be found in Exhibit CCC-102, where "Gross Receipts" are defined to include specifically, "Copyright Royalty Tribunal and similar revenues...", as part of the revenues that the distributor is entitled to share.

This is the same principle relied upon by the Supreme Court of the State of New York in CBS., *Inc. v. Viacom International, Inc.*,[65] which decided that a distributor was not entitled to retransmission royalties despite the very broad scope of its licensing agreement with the producer of the program. The court found that the distributor's compensation was limited to sums "derived from" the licensing of programs, not sums paid as statutory royalties. It concluded, "Viacom's expectations were still expressly limited under the agreement to a percentage of the licenses it was able to sell and did not include any other type of remuneration." The Board agrees with this approach.

Keeping these principles in mind, the Board decides as follows.

ii. Disputes Between CCC and CRRA

The Board assigns the rights to CRRA in all cases. None of the agreements amounts to an assignment of rights, and none can be interpreted as necessarily implying a grant of the right to collect the retransmission royalties.

For "Fresh Prince of Bel Air," Exhibit CCC-102 does contain the kind of language that the

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[65] Decision of April 30, 1992, filed as Exhibit CRRA-36.

Board is seeking. Unfortunately, it is found only in the sub-licensing agreement, and not in the initial contract from the producer of the programs; the producer is not a party to the sub-licensing agreement. The initial contract between NBC Productions and Quincy Jones Entertainment, filed as Exhibit CCC-98-iv, speaks only of the "exploitation" of programs. This sort of language is insufficient to transfer the entitlement to retransmission royalties. The licensee could not transfer to the sub-licensee more rights than he had acquired from the producer.

As to "General Hospital", the 1972 licensing agreement (Exhibit CRRA-39) does state that the rights granted include "the right to license [cable systems] to receive...and retransmit [television signals on cable]." However, the agreement predates the adoption in the United States of the compulsory retransmission regime. At the time, the existence of a marketable retransmission right was still being litigated. It made sense to grant distributors the right to license cable operators: if the right existed, producers needed brokers to effect sales. The Board is unable to construe such contracts as including the right to share in revenues flowing from a compulsory regime, where there is no need to place sales of the programs in the market.

"One Life to Live" is subject to the same contractual arrangement as "General Hospital."

In the case of "All my Children", Exhibit CCC-98-ii, again confirms that the intention of the parties to such contracts is that the distributor will be compensated for "[placing] this outstanding series in all media."

The final dispute is over a number of syndicated series the title to which is being litigated before the American courts. The Trial decision in this matter has awarded the copyright to CBS. Reimbursement of all royalties already collected by the MPAA has been ordered, even though an appeal has been launched. CCC proposed that it be allowed to collect the Canadian royalties until the appeal is settled. It does not seem reasonable to posit the allocation on the unknown outcome of an appeal in preference to the known outcome of a Supreme court judgment. The Board presumes that if the final outcome is favourable to the MPAA, the parties will govern themselves accordingly.

iii. Disputes Between CRRA and CRC

The first dispute between these collectives involved three series of "Twilight Zone" programs. CRC claimed only those programs in the new series and the Board agrees that it is entitled to these royalties. Exhibit CRC-52 clearly establishes that Twilight Zone Productions Inc., rather than CBS Canada Ltd, is the owner of the copyright in the new series for the territory of Canada. CRRA is entitled to the rest.

CRC also claimed ownership of ten programs produced for Radio-Québec. The contracts transfer to Radio-Québec "*le droit de diffusion*;" CRRA claims that this includes the right to collect the retransmission royalties. In the Board's view, these contracts grant a right to use the property. The entitlement to retransmission royalties is not a necessary adjunct to that right. Nor does the broadcaster require the retransmission right in a compulsory licensing regime.

Another dispute concerned certain programs broadcast on PBS stations. It is now clear that CRRA members own the rights to those programs. However, CRC argued that since these are the

only programs on PBS which CRC does not represent, it would be easier to let it manage the rights. The Board disagrees and assigns them to the collective representing their owner, CRRA.

iv. Disputes Between CRRA and FWS

CRRA is claiming the right to NFL and AFL games on CBS. In the 1990 decision, the Board allocated these to FWS. The only football games allocated to CRRA there were broadcast on ABC. FWS provided evidence which convinces the Board that all the "Contract Principles" contained in the 1987 agreements, which governed the Board's 1990 decision, had been retained in the 1990 contracts. The unilateral statement contained in Exhibit FWS-31, that CBS wished to add copyright as one of the issues which required additional language does not of itself constitute a change to those principles, especially in view of the testimony of Mr. Pinchbeck, who was present throughout the negotiations and who states that the issue was never even mentioned. The unilateral addition by CBS of its own copyright notice to the telecasts of the games is of no help either. It cannot of itself change the contractual relations of the parties. The copyright relationship between those parties has not changed. The dispute is settled in favour of FWS.

D. THE FINAL ALLOCATION

To generate the final allocation, the Board used essentially the same procedure as in the 1990 decision. The statistics used here are based on CCC-112 or 117.[66] Table II shows the viewing of disputed programs and their disposition by the Board. Tables III, IV and V then adjust viewing to include all collectives.[67]

TABLE II / TABLEAU II
SETTLEMENT OF DISPUTED PROGRAMS
(in millions of fifteen minute viewing impressions)

RÈGLEMENT DES LITIGES SUR LES ÉMISSIONS
(en millions d'impressions de quinze minutes)

Parties to the dispute Parties au litige	Canadian signals Signaux canadiens	U.S. signals Signaux américains	Disposition by the Board Décision de la Commission
CCC/CRRA SPDAC/ADRC	0.805	2.752	to CRRA / à l'ADRC
CCC/CRRA (Viacom) SPDAC/ADRC (Viacom)	0.058	0.372	to CRRA / à l'ADRC
CRC/CRRA SCR/ADRC	0.018	0.086	to CRC / à la SCR
CRC/CRRA (PBS) SRC/ADRC (PBS)		0.066	to CRRA / à l'ADRC

[66] CCC-112 contains figures for all sweeps. CCC-117 amalgamates the data from the Spring and Fall sweeps.
[67] Rows or columns may not sum because of rounding; all calculations have been done on the unrounded numbers.

CRRA/FWS ADRC/FWS	1.228	to FWS / à la FWS

TABLE III / TABLEAU III
ADJUSTED VIEWING FIGURES
(in millions of fifteen minute viewing impressions)

COTES D'ÉCOUTE RAJUSTÉES
(en millions d'impressions de quinze minutes)

Collective Société de perception	Canadian Signals Signaux canadiens	U.S. Signals Signaux américains
CCC/SPDAC	23.375	138.422
CRC/SCR	7.019	29.138
CRRA/ADRC	3.348	27.301
CBRA/ADRRC	11.970	0.746
BBC	0.0	8.205
FWS	2.286	2.468
TOTALS	**47.998**	**206.281**

In March, 1991 subscribers received 7.146 million distant signal instances originating in Canada and 23.562 million from the United States (see Table 5 of Appendix II).

The viewing impressions shown in the table above can be translated into shares, as shown in the next table.[68] MLB is to receive a 1.60 per cent share of viewing. Notionally we can treat it as receiving 0.464 per cent on Canadian signals and 1.136 per cent on U.S. signals.[69]

TABLE IV / TABLEAU IV
VIEWING SHARES ADJUSTED TO INCLUDE MLB
PARTS D'ÉCOUTE RAJUSTÉES POUR TENIR COMPTE DE LA LBM

Collective Société de perception	Canadian signals Signaux canadiens	U.S. signals Signaux américains	Total Share Part totale
CCC/SPDAC	9.046	53.566	62.612
CRC/SCR	2.716	53.566	13.992
CRRA/ADRC	1.295	10.565	11.860
CBRA/ADRRC	4.632	0.289	4.921
BBC	0.0	3.175	3.175
FWS	0.885	0.955	1.840

[68] To translate the viewing impressions in Table III into the percentages in Table IV each number must be multiplied by:

$(100 - 1.6) \div (47.998 + 206.281) = 98.4 \div 254.279 = 0.387$

The denominator is the total number of viewing impressions, and the numerator is the share of viewing of all parties after adjustment for MLB.

[69] The ratio of viewing of MLB programs on Canadian and U.S. signals is approximately 29:71. The only statistics available are those in the summer sweep of 1990, the proportions of viewing of MLB's programs are 28.620 and 71.380 per cent respectively.

MLB/LBM	0.464	1.136	1.600
TOTAL	**19.038**	**80.962**	**100.000**

The viewing figures must be adjusted to reflect the supply of U.S. and Canadian signals and the allocation to SOCAN. Each share of programs on Canadian signals must be multiplied by 1.222 and on U.S. signals by 0.948.[70] The sum of these adjusted shares is then rescaled by 0.9645 to reflect SOCAN's share of 3.55 per cent. These are shown in the last column of Table V, below.

TABLE V / TABLEAU V
VIEWING SHARES ADJUSTED TO INCLUDE SOCAN
PARTS D'ÉCOUTE RAJUSTÉES POUR TENIR COMPTE DE LA SOCAN

Collective Société de perception	Canadian Signals Signaux canadiens	U.S. Signals Signaux américains	Total	Adjusted Share Part rajustée
CCC/SPDAC	11.056	50.766	61.823	59.628
CRC/SCR	3.320	10.687	14.007	13.509
CRRA/ADRC	1.583	10.013	11.596	11.184
CBRA/ADRRC	5.662	0.274	5.935	5.724
BBC	0.0	3.009	3.009	2.903
FWS	1.082	0.905	1.987	1.916
MLB/LBM	0.567	1.077	1.644	1.585
TOTAL	**23.270**	**76.731**	**100.001**	**96.449**
SOCAN				3.55
GRAND TOTAL				**99.999**

These rescaled numbers, to two decimal places, are shown below, as they appear in the *Canada Gazette*.

TABLE VI / TABLEAU VI
FINAL ALLOCATION / RÉPARTITION FINALE

Collective	Share	Société de perception	Part
BBC	2.90	BBC	2,90
CBRA	5.72	ADRRC	5,72
CCC	59.63	SPDAC	59,63
CRC	13.51	SCR	13,51
CRRA	11.18	ADRC	11,18
FWS	1.92	FWS	1,92
MLB	1.59	LBM	1,59
SOCAN	3.55	SOCAN	3,55

[70] Each share must be divided by its column total and then multiplied by the appropriate share of supply. The share of supply of programs on Canadian signals 7.146 ÷ 30.708, or 0.233 and on U.S. signals 23.562 ÷ 30.708 or 0.767. The multiplier for the share of viewing on Canadian signals is:

23.270 ÷ 19.038 = 1.222

The multiplier for the share of viewing on U.S. signals is:

76.730 ÷ 80.962 = 0.948

TOTAL	**100.00**	**TOTAL**	**100,00**

VII. THE ROYALTIES TO BE PAID FORRADIO RETRANSMISSION

SOCAN, CRRA and CBRA each filed proposed radio retransmission tariffs. On October 19, 1992, they filed an agreement with CCTA, CANCOM and Regional. The approved radio retransmission tariff reflects in essence the terms of the agreement.

Large systems pay 5¢ per premises per year irrespective of the number of distant radio signals carried. Small retransmission systems pay a flat royalty of $12.50 per year. SOCAN and CBRA share equally in the royalties. As requested, the administrative provisions of the radio tariff mirror those of the television tariff.

The Board received no evidence at all on the retransmission of radio signals. The number of premises receiving distant radio signals is not known; there was no information available to the Board on their supply nor the audience share they attract. This leaves some unanswered questions.

For example, does the behaviour of radio listeners mirror that of television viewers? The lack of a record and the parties' agreement leaves the Board with little choice but to treat systems in francophone markets in the same way as in the television tariff. Yet the CRTC severely restricts the ability of retransmitters to carry American radio signals. Furthermore, the consumption patterns of English music and English television programming in francophone markets may well be very different.

Similarly one might wonder what kind of works are being offered and listened to on distant radio signals. Again, nothing on the record allows the Board to question the implicit agreement that CBRA (with CRRA) and SOCAN control equal shares of the works carried on distant radio signals. If (as may well be the case) most radio listening on cable is to FM stations, which rely very heavily on music then, given SOCAN's oft-repeated claim that it controls almost all the musical repertoire, this result is certainly counter-intuitive.

The Board wishes to explore these and other issues during the next retransmission hearings.

VIII. COMMENTS ON THE TARIFFS

On the whole, the Board followed the same tariff structure and drafting principles as in 1990. Most of the comments contained in the 1990 decision on technical aspects of the wording also remain apposite. No party suggested that the Board abandon a consolidated tariff and so this section focuses on the differences in the wording of the 1990-91 and 1992-94 tariffs.

The way in which the Board approached several substantive issues resulted in the excision of much of the text from the tariffs proposed by the parties. The decisions on the small systems and superstation signals are cases in point.

The drafting principles established in the 1990 decision were that the tariffs are regulations, not contracts; that they should be concise, self-contained, easy to read and understand; and that they

should balance the rights and obligations of those they bind. A new "principle" may be added: changes in wording should be limited to those necessary, in order to avoid the temptation for the reader to seek substantive differences where none exists.

The following comments, grouped into definitions and an itemized list of tariff sections highlight the main differences between the 1990-91 and 1992-94 tariffs, as well as the approaches taken by the Board on certain issues.

A. DEFINITIONS

Four definitions are modified.

CCC suggested that the definition of LPTV be modified so that all multi-point distribution system (MDS) signals be deemed scrambled. This would have resulted in none being able to claim the benefit of section 5 of the tariff, applicable to unscrambled LPTV systems. The Board prefers to remove the reference to MDSs from the definition of LPTV and to add it to the definition of retransmitter. In this way, the status of an MDS will be determined in the same way as any other system's.

The definition of retransmitter clarifies that a retransmitter is the operator of a system, not the system itself. The debate surrounding the notions of system and LSA made this necessary. The Board has tried to ensure predictability of results throughout the tariff, while not prejudging any conclusions that courts of law may reach.

The reference to unauthorized reception of signals has been removed from the definitions of "premises" and "TVRO." The issue is dealt with in section 8 of the tariff. CANCOM correctly pointed out that this is a substantive provision that should be in the body of the tariff, not appended to a definition.

A definition of "year" is added at the request of the parties. This word, unlike the word "month," is not defined in the *Interpretation Act*.

Differences in substance between the proposed and certified tariffs made some definitions suggested by the parties unnecessary; others had already been discussed in the 1990 decision (for example, "month" and "person").

B. SPECIFIC SECTIONS OF THE TARIFF

i. The Date at Which Small Retransmission System Status is Established [Television Tariff, s.4(2); Radio Tariff, s. 4(2)]

The date at which small retransmission system status must be assessed has been changed to December 31 of the preceding year from January 1 of the current year. This was done to respect the pattern, found elsewhere in the tariff, of status and liability generally being assessed on the last day of a month.

ii. Basis for the Choice of Rate in Large Systems [Television Tariff, s. 7(3)]

This ensures that all large systems reported within a LSA pay the same rate. It also establishes that the rate depends on the total number of premises served by all systems within the LSA. Thus, the rate for a MATV located within the service area of a cable system serving more than 6,000 premises will be 70¢, no matter how many subscribers are served.

iii. *Francophone Markets* [Television Tariff, s. 10; Radio Tariff, s. 8]

Subsection (1) makes it clear that this provision does not apply to DTH systems.

Subsection (2) sets out the manner of determining whether a system operates in a francophone market. The approach follows closely the suggestions of the parties. In paragraph (iii), for the sake of consistency, the Board has chosen to parallel the wording used by the CRTC in its Public Notice 1987-261.

iv. *Reporting Requirements* [Television Tariff, ss. 15 to 25; Radio Tariff, s. 11 to 20]

The reporting requirements set out in the 1992-94 tariffs are different in several respects from the 1990-91 tariff.

First, the provisions clarify that reporting is to be made on a system-by-system basis.

Second, more information is required. In the 1992-94 tariff retransmitters must still document the royalty submitted but are also required to provide general information necessary to understanding the retransmission market. The current hearings have established that the collectives may not be in a position to provide on their own a complete picture of the industry. The Board finds this information necessary to better understand the changes in the structure of the industry.

For this reason, retransmitters are now asked to provide their monthly fee for basic service, the breakdown of premises by type served and by signal received, as well as information concerning all services, broadcast and non-broadcast.

For the same reason, all systems, whether or not they retransmit a distant signal, are asked to report at least once a year and small systems are asked to file more information than in the last tariff. At the time of the next retransmission hearings, the Board will ask the collectives to provide this information.

Third, questions about premises within postal codes areas have been moved from the general reporting provisions to a separate verification section [s. 25]. The same is true of the requirement to provide the address of buildings containing premises entitled to a discount. This was done at the request of the parties, and should simplify reporting for most systems.

Fourth, reporting requirements for particular types of systems are spelled out individually. Retransmitters who operate more than one system are also being asked to provide a list of those systems.

Fifth, forms are now provided with the tariff. The Board is persuaded that using these forms should ease some of the difficulties in obtaining information that certain collectives have experienced. For the reasons given in the 1990 decision, the Board continues to reject the obligatory use of forms that are not incorporated in the tariff. This being said, the tariff allows any collective to agree with a retransmitter on a different reporting format.

Differences in the reporting requirements of the television and radio tariffs exist for two reasons. First, some of the information appears necessary in one case but not the other. Second, certain reporting requirements reflect the agreement of the parties.

v. *Audits* [Television Tariff, s. 26; Radio Tariff, s. 21]

The provision is changed in one respect. Subsection (4) makes it clear that the obligation to pay audit costs is triggered by an understatement of royalties within a reported system, and that the costs to be paid are the costs of the audit for that system.

vi. *Adjustments* [Television Tariff, s. 27; Radio Tariff, s. 22]

This provision now stands alone. At their request, retransmitters will now have the option of crediting excess royalty payments towards their future royalty payments until no excess remains.

vii. *Interest on monies owed* [Television Tariff, s. 28; Radio Tariff, s. 23]

The provision has been revised to clarify the time when an interest amount is to be assessed and the method of arriving at that amount. These adjustments make it possible to use the bank rate for the month in which the calculation is being made, rather than the rate of the previous month. The reference to the *Bank of Canada Review* has been removed because of proposed changes in its title and its frequency of publication.

viii. *Appointment of designate* [Television Tariff, s. 31; Radio Tariff, s. 26]

The collectives again requested that the tariff expressly provide for the appointment of a designate to receive notices or payments from retransmitters. The Board is still of the opinion that this is unnecessary but has chosen to spell out two conditions that have to be fulfilled before the appointment of a designate binds a retransmitter. This clarifies, by necessary implication, the ability of collectives to appoint such a designate.

ix. *Transitional Provisions* [Television Tariff, ss. 32-33; Radio Tariff, s. 27]

When they requested the issuance of an interim decision, the parties stated that they would not ask for any interest on adjustments for retroactive payments. The Board has opted to follow the parties' wish. All adjustments made by February 28, 1993 shall be interest-free.

In the same spirit, the Board looked for a way to avoid adjustments that would have little effect on the amount received by the collectives but could impose a significant administrative burden on all parties. This was most obvious in the case of small systems and unscrambled LPTV

systems. These would continue to pay a royalty of $100 a year, but would be faced with making corrections to account for the changes in the shares of the various collectives. None of these corrections would even cover the cost of processing the payment. For this reason, a system that paid the $100 royalty for the year 1992 before December 31, 1992 will not need to reallocate that royalty among the collectives on the basis of the 1992-94 tariff.

Such a measure is not required in the case of the Radio tariff, given the agreement reached between the parties. Retransmitters are required to proceed to the necessary adjustments.

At the time of the interim decision, Regional argued that the Board may be without jurisdiction to adopt a tariff taking effect on January 1, 1992. Given the nature of the changes between the 1990-91 and 1992-94 tariffs, there is no pressing need to debate this issue. The Board wishes to state that in its opinion the legislative scheme not only authorizes, but dictates, a tariff that takes effect on the first day of the year. Furthermore, the nature of interim decisions and the ability of a decision-maker to revisit their consequences appear to be settled issues.[71]

Philippe Rabot
Secretary General

IX. APPENDIX I / ANNEXE I: WITNESSES APPEARING AT THE HEARING / TÉMOINS AYANT DÉPOSÉ À L'AUDIENCE

For CCC		Pour la SPDAC
Partner and Chief Economist Coopers & LybrandConsulting Group, Toronto	Maureen Farrow	Associée et économiste en chef, *Coopers* & *Lybrand Consulting Group*, Toronto
Senior Analyst, Culture Statistics Program, Statistics Canada, Ottawa	John Gordon	Analyste principal, Programme de la statistiqueculturelle, Statistique Canada, Ottawa
Professor, Faculty of Law, University of Toronto,Toronto	Hudson Janisch	Professeur, Faculté de droit, *University of Toronto*, Toronto
Director, Copyright Royalty Distribution, MotionPicture Association of America, Washington, D.C.	Marsha Kessler	Directrice, Distribution du droit d'auteur, *MotionPicture Association of America*, Washington, D.C.
Vice-President and Product Manager, NielsenHome Video Index, Tarrytown, NY	Paul Lindstrom	Vice-président et gérant des produits, *Nielsen Home Video Index*, Tarrytown, NY
General Manager, Copyright Collective of Canada, Toronto	Susan Peacock	Directrice générale, Société de perception de droitd'auteur du Canada, Toronto

[71] See *Bell Canada v. Canada (CRTC)*, [1989] 1 SCR 1722.

Former Partner, Holland and Knight, Washington, D.C.	Arthur Scheiner	Associé retraité, *Holland and Knight*, Washington, D.C.
Professor, Department of Sociology, Universityof Toronto, Toronto	Lorne Tepperman	Professeur, Département de sociologie, *Universityof Toronto*, Toronto
For CRC		**Pour la SCR**
Executive Director, Canadian RetransmissionCollective, Toronto	Carol Cooper	Directrice exécutive, Société collective de retransmission du Canada, Toronto
Director, PBS Research, New York, NY	John Fuller	Directeur, PBS Research, New York, NY
Head of Communications and Entertainment Law Group, McCarthy Tétrault, Toronto	Peter Grant	Chef, Groupe du droit des communications et du spectacle, McCarthy Tétrault, Toronto
Associate Professor, Department of Communications, Simon Fraser University, Burnaby	Catherine Murray	Professeur, Département des communications, Simon Fraser University, Burnaby
For CRRA		**Pour l'ADRC**
Counsel to the Secretary General, Radio-Québec, Montreal	Bernard Benoist	Conseiller auprès du secrétaire général, Radio-Québec, Montréal
Capital Cities ABC Video Enterprises, New York, NY	Carol Brokaw	Capital Cities ABC Video Enterprises, New York, NY
General Attorney, CBS Inc., New York, NY	Sandford Kryle	Avocat général, CBS Inc., New York, NY
General Attorney, Capital Cities ABC Inc.	John Litner	Avocat général, Capital Cities ABC Inc.
Vice-President, Legal and Business Affairs, Capital Cities ABC Video Enterprises and Publishing, New York, NY	Larry Loeb	Vice-président, Affaires juridiques et commerciales, Capital Cities ABC Video Enterprises and Publishing, New York, NY
Director of Planning and Production, Arts and Entertainment, CBC Television Network, Toronto	Bruce MacKay	Directeur de la planification et de la production, arts et spectacles, CBC Television Network, Toronto
Director of Research, Canadian Broadcasting Corporation, Ottawa	Stan Staple	Directeur de la recherche, Société Radio-Canada, Ottawa
Assistant General Attorney, National Broadcasting Company Inc., New York, NY	Julie Sullivan	Avocat général adjoint, National Broadcasting Company Inc., New York, NY
For FWS		**Pour la FWS**
Professor, Department of Economics, Carleton University, Ottawa	Keith Acheson	Professeur, Département d'économique, Université Carleton, Ottawa
President, NBA Television Ventures and Vice-President of Television, NBA International Limited	Ed Desser	Président, NBA Television Ventures et vice-président, télévision, NBA International Limited
Attorney, Washington, D.C.	Philip Hochberg	Avocat, Washington, D.C.
Vice-President, Broadcasting and Production, National Football League, Massequa Park, NY	V. Arthur Pinchbeck	Vice-président, diffusion et production, National Football League, Massequa Park, NY
Consultant, Former President and Chief Executive Officer, COMSAT Video Enterprises Inc.	Robert Wussler	Expert conseil, ancien président et chef de la direction, COMSAT Video Enterprises Inc.
For SOCAN		**Pour la SOCAN**
Associate Professor of Managerial Economics, School of Management, University of Texas at Dallas, Dallas, TX	Stanley Liebowitz	Professeur d'économie de la gestion, School of Management, University of Texas at Dallas, Dallas, TX

For MLB		Pour la LBM
Executive Director of Broadcasting, Major League Baseball, Office of the Baseball Commissioner, New York, NY	David Alworth	Directeur exécutif de la diffusion, Major League Baseball, Office of the Baseball Commissioner, New York, NY
President and Chief Executive Officer, Blue Jays Baseball Club, Toronto	Paul Beeston	Président et chef de la direction, Blue Jays Baseball Club, Toronto
Associate Professor, School of Library and Information Studies, University of California at Berkeley, Berkeley, CA	Yale Braunstein	Professeur, School of Library and Information Studies, University of California at Berkeley, Berkeley, CA
President and Chief Operating Officer, Montreal Baseball Club Limited, Montreal	Claude Brochu	Président et chef de la direction, Club de baseball de Montréal Limitée, Montréal
For BBC		**Pour la BBC**
Vice-President and General Manager, WXYZ-TV, Detroit, MI	Tom Griersdon	Vice-président et directeur général, WXYZ-TV, Détroit, MI
Former Vice President and General Counsel, King Broadcasting Company, Seattle, WA	Suzanne Sorknes	Ancienne vice-présidente et avocate générale, King Broadcasting Company, Seattle, WA
For CBRA		**Pour l'ADRRC**
Principal, EntreSys Canada Inc., Ottawa	Richard Amey	Associé principal, EntreSys Canada Inc., Ottawa
Executive Director, Canadian Broadcaster's Rights Agency Inc., Ottawa	Tony Scapillati	Directeur exécutif, Agence des droits des radio-diffuseurs canadiens, Inc., Ottawa
For CCTA		**Pour l'ACTC**
Director, Communications Finance, Toronto Dominion Securities Inc., Toronto	Rod Ashtaryeh	Directeur, Financement des communications, Toronto Dominion Securities Inc., Toronto
Vice-President, Research and Policy Analysis, National Cable Television Association, Washington, D.C.	Cynthia Brumfield	Vice-présidente, recherche et analyse des politiques, National Cable Television Association, Washington, D.C.
President and Chief Executive Officer, Arts & Entertainment Network, New York, NY	Nickolas Davatzes	Président et chef de la direction, Arts & Entertainment Network, New York, NY
Partner, Cole, Raywid and Braverman, Washington, D.C.	Wesley Heppler	Associé, Cole, Raywid and Braverman, Washington, D.C.
General Manager, Fredericton Division, Fundy Cable Ltd., Fredericton	Clinton Lawrence	Directeur général, Fredericton Division, Fundy Cable Ltd., Fredericton
Vice-President, Communications Group, Toronto Dominion Bank, Toronto	Wendy Leaney	Vice-présidente, Groupe des communications, Banque Toronto-Dominion, Toronto
Vice-President and General Manager, Conquest Research Group Division, Bureau of Broadcast Measurement, Toronto	Duncan McKie	Vice-président et directeur général, Conquest Research Group Division, Bureau of Broadcast Measurement, Toronto
Senior Sales Representative, Research Director, Target Broadcast Sales Limited, Toronto	Debra McLaughlin	Représentante senior des ventes, directrice de la recherche, Target Broadcast Sales Limited, Toronto
President, Paul Martel Inc., Montreal	Paul Martel	Président, Paul Martel Inc., Montréal
Controller, CUC Broadcasting Limited and Trillium Cable Communications Limited	Koji Nakai	Contrôleur, CUC Broadcasting Limited et Trillium Cable Communications Limited
Partner and Executive Director,Groupe CIC, Montréal	Richard Paradis	Associé et directeur général, Groupe CIC, Montréal
President, Cleveland S. Patterson and AssociatesLtd. and Associate Professor of	Cleveland Patterson	Président, Cleveland S. Patterson and AssociatesLtd. et professeur de finances,

Finance, Concordia University, Montreal		Université Concordia, Montréal
Vice-President, Research and Business Development, Cable, COGECO Inc., Montreal	Mark Pezarro	Vice-président, recherche et développement desaffaires, Câble, COGECO Inc., Montréal
Vice-President, Programming and Regulatory,Rogers Cable Systems Limited, Toronto	Paul Temple	Vice-président, programmation et réglementation,Rogers Cable Systems Limited, Toronto
Professor, Faculty of Law, University of Montreal, Montreal	PierreTrudel	Professeur, Faculté de droit, Université de Montréal, Montréal
President and Chief Executive Officer, CanadianCable Television Association, Ottawa	Kenneth Stein	Président et chef de la direction, Association canadienne de télévision par câble, Ottawa
For Regional		**Pour Regional**
President and Chief Executive Officer, RegionalCable Systems Inc., Oakville	GaryKain	Président et chef de la direction, Entreprises detélédistribution régionales Inc., Oakville
General Manager, Research Associates,St. John's, Newfoundland	Brendan Paddick	Directeur général, Research Associates,St. John's, Terre-Neuve
For CANCOM		**Pour CANCOM**
President and Chief Executive Officer, Cancom,Toronto	Sheelagh Whittaker	Présidente et chef de la direction,Cancom, Toronto

X. APPENDIX II / ANNEXE II: TABLE OF CONTENTS / TABLE DES MATIÈRES

Unless otherwise specified, the source of the data found in these tables is the electronic version of the database filed as CCC-6.

À moins d'indication contraire, les données figurant dans ces tableaux sont tirées de la version électronique de la banque de données déposée comme pièce SPDAC-6.

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Average number of distant signals receivedby subscribers	**2**	Nombre moyen de signaux éloignés reçus par les abonnés
Comparison of CCC and CRRA data submitted in the 1989-90 hearing and in the 1991-92 hearing	**3**	Comparaison entre les données soumises par la SPDAC et l'ADRC aux audiencesde 1989-1990 et de 1991-1992
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Cable operators reporting systems carrying no distant signals	**9**	Câblodistributeurs ne distribuant aucun signal éloigné
Cable operators reporting systems carrying	**10**	Câblodistributeurs ne distribuant que des

only partially distant signals		signaux partiellement éloignés
Duplicate distant signals – large systems – by province and language	**11**	Signaux éloignés jumeaux – grands systèmes – ventilés par province et par langue
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Superstation carriage	**15**	Distribution de signaux de superstations

TABLE 1: NUMBER OF SUBSCRIBERS TO RETRANSMISSION SYSTEMS

TABLEAU 1: NOMBRE D'ABONNÉS AUX SYSTÈMES DE RETRANSMISSION

	SMALL SYSTEMS PETITS SYSTÈMES			LARGE SYSTEMS GRANDS SYSTÈMES			ALL SYSTEMS TOUS LES SYSTÈMES		
	(1)	**(2)**	**(3)**	**(1)**	**(2)**	**(3)**	**(1)**	**(2)**	**(3)**
NEWFOUNDLAND / TERRE-NEUVE	55,899	55,899	55,899	66,838	66,838	66,838	122,737	122,737	122,737
P.E.I / Î.-P.-É	10,147	10,147	10,147	12,691	12,691	12,691	22,838	22,838	22,838
NOVA SCOTIA / NOUVELLE-ÉCOSSE	42,165	42,165	42,165	169,867	169,867	169,867	212,032	212,032	212,032
NEW BRUNSWICK / NOUVEAU-BRUNSWICK	48,293	48,293	48,293	124,443	124,443	124,443	172,736	172,736	172,736
QUEBEC / QUÉBEC	139,680	144,938	152,766	935,605	1,345,827	1,489,177	1,075,285	1,490,765	1,641,943
ONTARIO	97,272	97,272	97,272	2,420,626	2,667,311	2,667,311	2,517,898	2,764,583	2,764,764
MANITOBA	19,289	19,289	19,417	240,739	240,739	240,739	260,028	260,028	260,156
SASKATCHEWAN	50,230	50,230	50,460	148,395	148,395	148,395	198,625	198,625	198,627
ALBERTA	30,325	30,325	30,325	597,378	597,378	597,378	627,703	627,703	627,703
BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE	40,160	40,160	40,332	923,152	993,889	993,889	963,312	1,034,049	1,034,221
TOTAL	**533,460**	**538,718**	**547,257**	**5,639,734**	**6,367,378**	**6,510,728**	**6,173,194**	**6,906,096**	**7,057,985**

1. Subscribers receiving distant signals
2. Subscribers to systems carrying distant signals

3. All subscribers to all systems
1. Abonnés qui reçoivent des signaux éloignés
2. Abonnés aux systèmes qui distribuent des signaux éloignés
3. Abonnés à tous les systèmes

TABLE 2: AVERAGE NUMBER OF DISTANT SIGNALS RECEIVED BY SUBSCRIBERS

TABLEAU 2: NOMBRE MOYEN DE SIGNAUX ÉLOIGNÉS REÇUS PAR LES ABONNÉS

ALL SYSTEMS / TOUS LES SYSTÈMES							
	BASED ON THE NUMBER OF RESIDENTIAL SUBSCRIBERS RECEIVING AT LEAST ONE DISTANT SIGNAL SELON LE NOMBRE D'ABONNÉS RÉSIDENTIELS RECEVANT AU MOINS UN SIGNAL ÉLOIGNÉ		BASED ON THE NUMBER OF RESIDENTIAL SUBSCRIBERS TO SYSTEMS CARRYING AT LEAST ONE DISTANT SIGNAL SELON LE NOMBRE D'ABONNÉS RÉSIDENTIELS AUX SYSTÈMES QUI DISTRIBUENT AU MOINS UN SIGNAL ÉLOIGNÉ			BASED ON THE TOTAL NUMBER OF RESIDENTIAL SUBSCRIBERS SELON LE NOMBRE TOTAL D'ABONNÉS RÉSIDENTIELS	
	BASIC DISTANT SIGNALS SIGNAUX ÉLOIGNÉS DE BASE	DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS	BASIC DISTANT SIGNALS SIGNAUX ÉLOIGNÉS DE BASE		DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS	BASIC DISTANT SIGNALS SIGNAUX ÉLOIGNÉS DE BASE	DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS
			ENGLISH ANGLAIS	FRENCH FRANÇAIS			
NEWFOUNDLAND/TERRE-NEUVE	5.44	0.00	5.15	0.29	0.00	5.44	0.00
P.E.I / Î.-P.-É	6.14	0.60	4.94	1.20	0.60	6.14	0.60
NOVA SCOTIA / NOUVELLE-ÉCOSSE	5.15	0.51	4.51	0.64	0.51	5.15	0.51
NEW BRUNSWICK/ NOUVEAU-BRUNSWICK	5.85	0.34	3.93	1.92	0.34	5.85	0.34
QUEBEC / QUÉBEC	4.20	0.00	2.51	0.52	0.00	2.75	0.00
ONTARIO	4.54	0.01	3.94	0.19	0.01	4.14	0.01
MANITOBA	4.97	0.66	4.12	0.85	0.66	4.96	0.66

SASKATCHEWAN	4.54	0.11	4.35	0.19	0.11	4.53	0.11
ALBERTA	6.16	0.38	5.74	0.42	0.38	6.16	0.38
BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE	6.01	0.35	5.41	0.19	0.33	5.60	0.33
TOTAL	**4.97**	**0.16**	**4.08**	**0.37**	**0.14**	**4.35**	**0.14**

TABLE 2 (Continued) / TABLEAU 2 (Suite)

LARGE SYSTEMS / GRANDS SYSTÈMES							
	BASED ON THE NUMBER OF RESIDENTIAL SUBSCRIBERS RECEIVING AT LEAST ONE DISTANT SIGNAL SELON LE NOMBRE D'ABONNÉS RÉSIDENTIELS RECEVANT AU MOINS UN SIGNAL ÉLOIGNÉ		BASED ON THE NUMBER OF RESIDENTIAL SUBSCRIBERS TO SYSTEMS CARRYING AT LEAST ONE DISTANT SIGNAL SELON LE NOMBRE D'ABONNÉS RÉSIDENTIELS AUX SYSTÈMES QUI DISTRIBUENT AU MOINS UN SIGNAL ÉLOIGNÉ			BASED ON THE TOTAL NUMBER OF RESIDENTIAL SUBSCRIBERS SELON LE NOMBRE TOTAL D'ABONNÉS RÉSIDENTIELS	
	BASIC DISTANT SIGNALS SIGNAUX ÉLOIGNÉS DE BASE	DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS	BASIC SIGNALS SIGNAUX DE BASE		DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS	BASIC SIGNALS SIGNAUX DE BASE	DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS
			ENGLISH ANGLAIS	FRENCH FRANÇAIS			
NEWFOUNDLAND / TERRE-NEUVE	4.70	0.00	4.37	0.33	0.00	4.70	0.00
P.E.I / Î.-P.-É	6.42	0.48	5.00	1.42	0.48	6.42	0.48
N.S. / N.-É.	4.96	0.59	4.33	0.63	0.59	4.96	0.59
N.B. / N.-B.	5.83	0.42	3.78	2.05	0.42	5.83	0.42
QUEBEC / QUÉBEC	4.06	0.00	2.39	0.44	0.00	2.55	0.00
ONTARIO	4.48	0.01	3.88	0.19	0.01	4.06	0.01
MANITOBA	5.00	0.71	4.11	0.89	0.71	5.00	0.71
SASKATCHEWAN	4.25	0.14	4.15	0.11	0.14	4.25	0.14
ALBERTA	6.19	0.39	5.78	0.41	0.39	6.19	0.39
B.C. / C.-B.	6.04	0.37	5.43	0.18	0.34	5.61	0.34

TOTAL	**4.91**	**0.17**	**4.02**	**0.34**	**0.15**	**4.26**	**0.15**
SMALL SYSTEMS / PETITS SYSTÈMES							
	BASIC SIGNALS SIGNAUX DE BASE	DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS	BASIC SIGNALS SIGNAUX DE BASE		DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS	BASIC SIGNALS SIGNAUX DE BASE	DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS
			ENGLISH ANGLAIS	FRENCH FRANÇAIS			
NEWFOUNDLAND / TERRE-NEUVE	6.33	0.00	6.09	0.23	0.00	6.33	0.00
P.E.I / Î.-P.-É.	5.79	0.76	4.87	0.92	0.76	5.79	0.76
N.S. / N.-É.	5.91	0.19	5.25	0.66	0.19	5.91	0.19
N.B. / N.-B.	5.88	0.13	4.30	1.58	0.13	5.88	0.13
QUEBEC / QUÉBEC	5.12	0.00	3.67	1.27	0.00	4.68	0.00
ONTARIO	6.09	0.01	5.70	0.39	0.01	6.08	0.01
MANITOBA	4.52	0.00	4.14	0.38	0.00	4.50	0.00
SASKATCHEWAN	5.39	0.01	4.94	0.44	0.01	5.36	0.01
ALBERTA	5.53	0.17	5.02	0.51	0.17	5.53	0.17
B.C. / C.-B.	5.42	0.07	5.01	0.41	0.07	5.40	0.07
TOTAL	**5.62**	**0.06**	**4.81**	**0.75**	**0.06**	**5.48**	**0.06**

TABLE 3: COMPARISON OF CCC AND CRRA DATA SUBMITTED IN THE 1989-90 HEARING AND IN THE 1991-92 HEARING

TABLEAU 3: COMPARAISON ENTRE LES DONNÉES SOUMISES PAR LA SPDAC ET L'ADRC AUX AUDIENCES DE 1989-1990 ET DE 1991-1992

DATE AT WHICH THE STATISTICS WERE COMPILED DATE À LAQUELLE LES STATISTIQUES ONT ÉTÉ COMPILÉES	SOURCE OF THE DATA SOURCE DES DONNÉES	RESIDENTIAL SUBSCRIBERS TO ALL SYSTEMS (IN MILLIONS) ABONNÉS RÉSIDENTIELS À TOUS LES SYSTÈMES (EN MILLIONS)	BASIC DISTANT SIGNAL INSTANCES IN LARGE SYSTEMS (IN MILLIONS) UNITÉS DE RÉCEPTION DE SIGNAUX ÉLOIGNÉS DE BASE DES GRANDS SYSTÈMES (EN MILLIONS)
CCC (March 1989) SPDAC (Mars 1989)	Tables III and IV of the 1989-1 Decision / Tableaux III et IV de la décision de 1989-1	6.586	28.799
CRRA-1 (Dec. 1990)	CRRA-1A and CRRA-1B /	6.685[1]	29.298

ADRC-1 (Déc. 1990) CCC (March 1991) SPDAC (Mars 1991) CRRA-4 (June 1991) ADRC-4 (Juin 1991)	ADRC-1A et ADRC-1B Tables 1 and 4 / Tableaux 1 et 4 CRRA Database (June 1991) and CRRA-4A / Base de données de l'ADRC (juin 1991) et ADRC-4A	7.058 6.929	27.712[2] 29.352[3]

1. CRRA did not give the precise number of subscribers to cable. This number is estimated by computing the number of distant subscribers to the ABC network, since it is the most widely received distant signal.
2. If discretionary signals are included, there are 28.659 million distant signal instances.
3. If discretionary signals are included there are 31.037 million distant signal instances. This number is computed from the CRRA electronic database because CRRA did not break down the discretionary signal figures for small and large systems in its written evidence (CRRA-4C).

1. L'ADRC n'a pas fourni le nombre précis d'abonnés au câble. Ce nombre estimatif se fonde sur le nombre d'abonnés aux signaux éloignés du réseau ABC qui est le signal reçu par le plus grand nombre d'abonnés.
2. En incluant les signaux facultatifs, on obtient 28,659 millions d'unités de réception de signaux éloignés.
3. En incluant les signaux facultatifs, on obtient 31,037 millions d'unités de réception de signaux éloignés. Ce nombre est calculé à partir de la banque de données électronique de l'ADRC, celle-ci n'ayant pas fait la distinction entre le nombre de signaux facultatifs des petits et des grands systèmes dans sa preuve écrite (ADRC-4).

TABLE 4: SIGNALS RECEIVED BY SUBSCRIBERS TO RETRANSMISSION SYSTEMS
(IN MILLIONS)

TABLEAU 4: SIGNAUX REÇUS PAR LES ABONNÉS AUX SYSTÈMES DE RETRANSMISSION
(EN MILLIONS)

	BASIC SIGNALS (LOCAL) SIGNAUX DE BASE (LOCAUX)	BASIC SIGNALS (DISTANT) SIGNAUX DE BASE (ÉLOIGNÉS)	DISCRETIONARY SIGNALS SIGNAUX FACULTATIFS
SMALL SYSTEMS / PETITS SYSTÈMES	2.5916	2.9965	0.0318
LARGE SYSTEMS / GRANDS SYSTÈMES	57.6946	27.7115	0.9471
ALL SYSTEMS / TOUS LES SYSTÈMES	60.2862	30.7080	0.9790[1]

TABLE 5: LANGUAGE AND COUNTRY OF ORIGIN OF BASIC DISTANT SIGNALS
(IN MILLIONS)

TABLEAU 5: LANGUE ET PAYS D'ORIGINE DES SIGNAUX ÉLOIGNÉS DE BASE (EN MILLIONS)

	ENGLISH.SIGNALS. ORIGINATING. IN THE U.S. SIGNAUX ANGLAIS PROVENANT DES É.-U.	FRENCH SIGNALS ORIGINATING IN CANADA SIGNAUX FRANÇAIS PROVENANT DU CANADA	ENGLISH SIGNALS ORIGINATING IN CANADA SIGNAUX ANGLAIS PROVENANT DU CANADA	ALL BASIC DISTANT SIGNALS TOUS LES SIGNAUX ÉLOIGNÉS DE BASE
SMALL SYSTEMS / PETITS SYSTÈMES	1.8420	0.4100	0.7445	2.9965
LARGE SYSTEMS / GRANDS SYSTÈMES	21.7203	2.1386	3.8527	27.7115[1]
ALL SYSTEMS / TOUS LES SYSTÈMES	23.5622[1]	2.5486	4.5971[1]	30.7080[1]

1. Columns or rows may not sum because of rounding.
1. L'écart dans la somme est dû au fait que certains chiffres ont été arrondis.

TABLE 6: DISTRIBUTION OF SUBSCRIBERS BY LICENSED SERVICE AREAS (LSAs) AND BY SYSTEMS AS REPORTED BY CABLE COMPANIES

TABLEAU 6: VENTILATION DES ABONNÉS PAR ZONES DE DESSERTE AUTORISÉES (ZDA) ET PAR SYSTÈMES DÉCLARÉS PAR LES ENTREPRISES DE CÂBLODISTRIBUTION

	Licensed Service Areas[1] Zones de desserte autorisées[1]			Systems As Reported By Cable Companies[2] Systèmes déclarés par les entreprises de câblodistribution[2]		
System Size (By Number of Subscribers) Grandeur du système (selon le nombre d'abonnés)	Number of Systems Nombre de systèmes	Number of Subscribers Nombre d'abonnés	Percentage of Subscribers Pourcentage des abonnés	Number of Systems Nombre de systèmes	Number of Subscribers Nombre d'abonnés	Percentage of Subscribers Pourcentage des abonnés
Over 500,000 / Plus de 500,000	1	604,1028.65		0	00	
250,000 - 499,999	2	618,9368.86		2	647,5359.17	
100,000 - 249,999	14	1,883,97626.98		15	1,967,35427.87	
50,000 - 99,999	13	875,24612.54		16	1,020,14114.45	
25,000 - 49,999	25	884,15512.66		24	776,15511.00	
10,000 - 24,999	58	906,16912.98		71	1,071,76215.19	
6,000 - 9,999	33	262,1533.75		35	257,2913.65	

1,001 - 5,999	245	621,1768.90	331	770,49010.92
Total – Large Systems / Grands systèmes	392,00	4 771,0089,00	496,00	2 453,0092.25
1 - 1,000	1,478	326,2694.67	2,229	547,2577.75
Total – All Systems / Tous les systèmes	1,00	6,982,18299.99	2,723	7,057,985100.00
0 Subscribers / 0 Abonnés	1	00	27	00
GRAND TOTAL	**1,870**	**6,982,182**	**2,750**	**7,057,985**

The subscriber totals differ because the numbers come from two different sources. The number of subscribers in LSAs is from Mediastats, while the number for the systems comes from cable companies. They differ by only one per cent. The different source also explains the discrepancy in the number of systems and the distribution of subscribers by system size, large and small.

1. The LSAs are sorted by the number of residential premises served.
2. Systems are sorted by the total number of subscribers (both residential and non-residential) but the subscriber figures reported here include only residential subscribers. This may also result in discrepancies. For instance, one large system reported by a cable company as having over 1,000 subscribers appears as a small LSA because the system serves under 1,000 residential premises. These anomalies are few and unimportant.

L'écart dans les totaux est dû au fait que les nombres proviennent de deux sources différentes. Le nombre d'abonnés dans les ZDA provient de Mediastats, tandis que les nombres relatifs aux systèmes proviennent des entreprises de câblodistribution. L'écart atteint seulement un pour cent. Cette source différente explique aussi l'écart entre le nombre de systèmes et la ventilation des abonnés entre les grands et les petits systèmes.

1. Les ZDA sont classées selon le nombre de locaux résidentiels desservis.
2. Les systèmes sont classés selon le nombre total d'abonnés (résidentiels et non résidentiels) mais le nombre d'abonnés indiqué ici inclut seulement les abonnés résidentiels. On peut donc constater certains écarts. Par exemple, un grand système rapporté par une entreprise de câblodistribution comme ayant plus de 1 000 abonnés figure comme petite ZDA parce que ce système dessert moins de 1 000 locaux résidentiels. Ces anomalies sont peu fréquentes et sans importance.

TABLE 7: DISTRIBUTION OF SUBSCRIBERS BY SMALL LSAs AND BY SMALL SYSTEMS

TABLEAU 7: VENTILATION DES ABONNÉS PAR PETITES ZDA ET PAR PETITS SYSTÈMES

	Licensed Service Areas[1] Zones de desserte autorisées[1]			Systems As Reported By Cable Companies[2] Systèmes déclarés par les entreprises de câblodistribution		
System Size	Number of	Number of	Percentage of	Number of	Number of	Percentage

(Number of Subscribers) Grandeur du système (selon le nombre d'abonnés)	Systems Nombre de systèmes	Subscribers Nombre d'abonnés	Subscribers Pourcentage des abonnés	Systems Nombre de systèmes	Subscribers Nombre d'abonnés	of Subscribers Pourcentage des abonnés
900 - 1,000	24	22,480	0,01	47	44,292	0,01
800 - 899	25	21,134	0,01	40	33,979	0,01
700 - 799	29	22,136	0,01	59	43,766	0,01
600 - 699	43	27,894	0,01	70	45,205	0,01
500 - 599	56	30,520	0,01	101	54,846	0,01
400 - 499	68	30,348	0,01	127	56,769	0,01
300 - 399	111	37,797	0,01	226	77,914	0,01
200 - 299	185	45,003	0,01	266	65,729	0,01
100 - 199	391	54,844	0,02	595	85,893	0,02
1 - 99	546	34,113	0,01	698	38,864	0,01
TOTAL 0 Subscribers/0 Abonné	**1 479,00 1**	**322,00 0**	**0,10**	**2 231,00 27**	**540,00 0**	**0,10**

The subscriber totals differ because the numbers come from two different sources. The number of subscribers in LSAs is from Mediastats, while the number for the systems comes from cable companies. They differ by only one per cent. The different source also explains the discrepancy in the number of systems and the distribution of subscribers by system size, large and small.

1. The LSAs are sorted by the number of residential premises served.
2. Systems are sorted by the total number of subscribers (both residential and non-residential) but the subscriber figures reported here include only residential subscribers. This may also result in discrepancies. For instance, one large system reported by a cable company as having over 1,000 subscribers appears as a small LSA because the system serves under 1,000 residential premises. These anomalies are few and unimportant.

L'écart dans les totaux est dû au fait que les nombres proviennent de deux sources différentes. Le nombre d'abonnés dans les ZDA provient de Mediastats, tandis que les nombres relatifs aux systèmes proviennent des entreprises de câblodistribution. L'écart atteint seulement un pour cent. Cette source différente explique aussi l'écart entre le nombre de systèmes et la ventilation des abonnés entre les grands et les petits systèmes.

1. Les ZDA sont classées selon le nombre de locaux résidentiels desservis.
2. Les systèmes sont classés selon le nombre total d'abonnés (résidentiels et non résidentiels) mais le nombre d'abonnés indiqué ici inclut seulement les abonnés résidentiels. On peut donc constater certains écarts. Par exemple, un grand système rapporté par une entreprise de câblodistribution comme ayant plus de 1 000 abonnés figure comme petite ZDA parce que ce système dessert moins de 1 000 locaux résidentiels. Ces anomalies sont peu fréquentes et sans importance.

TABLE 8: DISTRIBUTION OF LARGE SYSTEMS BY NUMBER OF DISTANT

SIGNALS CARRIED

TABLEAU 8: VENTILATION DES GRANDS SYSTÈMES SELON LE NOMBRE DE SIGNAUX ÉLOIGNÉS DISTRIBUÉS

NUMBER OF DISTANT SIGNALS NOMBRE DE SIGNAUX ÉLOIGNÉS	NUMBER OF SYSTEMS NOMBRE DE SYSTÈMES	RESIDENTIAL SUBSCRIBERS RECEIVING DISTANT SIGNALS ABONNÉS RÉSIDENTIELS QUI REÇOIVENT DES SIGNAUX ÉLOIGNÉS	RESIDENTIAL SUBSCRIBERS ABONNÉS RÉSIDENTIELS	NUMBER OF DISTANT SIGNAL INSTANCES NOMBRE D'UNITÉS DE RÉCEPTION DE SIGNAUX ÉLOIGNÉS
0	22	0	143,350	0
1	10	534,505	894,198	519,202
2	58	487,948	855,899	713,930
3	14	176,376	176,376	509,321
4	56	576,388	576,388	2,119,351
5	99	1,313,795	1,313,795	6,553,202
6	69	950,689	950,689	5,620,946
7	81	841,853	841,853	5,764,900
8	49	338,174	338,174	2,503,321
9	24	334,530	334,530	2,964,999
10	6	19,058	19,058	189,647
11	3	10,131	10,131	111,441
12	0	0	0	0
13	0	0	0	0
14	1	10,087	10,087	141,218
TOTAL	**492**	**5,593,534**	**6,464,528**	**27,711,478**

NOTES:

There is an apparent discrepancy in line two, since 534,505 subscribers receive distant signals, yet only 519,202 instances of distant signals are recorded. This can be traced back to the method of counting instances (i.e. the percentage of distant signals times the number of subscribers) and the method of counting distant subscribers (as reported by cable companies). For example a system reported in the database as having 100 subscribers may be listed as carrying only one partially distant signal (70 per cent distant) but report 80 distant residential subscribers. This may lead to some minor differences.

There may be discrepancies in other rows but they will be masked by the pattern of reception. For instance, in line three, while all 58 systems carry two distant signals, in some of them, one of the signals may be received as local by some subscribers.

Two cable systems in Hamilton report distant subscribers although CCC estimates they carry only local signals. Those signals and subscribers are not included here. Taking them into account produces the subscriber numbers found in Table 1.

REMARQUES:

Il y a une anomalie apparente à la deuxième ligne: 534 505 abonnés reçoivent des signaux éloignés mais on note seulement 519 202 unités de réception de signaux éloignés. Ceci s'explique par la méthode de calcul des unités de réception (soit le pourcentage de signaux éloignés multiplié par le nombre d'abonnés) et la méthode de calcul des abonnés aux signaux éloignés (déclarés par les entreprises de câblodistribution). Par exemple, un système répertorié dans la base de données comme ayant 100 abonnés peut être inscrit comme distribuant seulement un signal partiellement éloigné (éloigné à 70 pour cent) mais déclarer 80 abonnés résidentiels recevant un signal éloigné. Il peut en résulter quelques différences mineures.

Il peut y avoir des divergences dans d'autres lignes mais elles seront cachées par le mode de réception. Par exemple, à la troisième ligne, les 58 systèmes distribuent deux signaux éloignés, mais un des signaux peut être reçu comme un signal local par une partie des abonnés de certains systèmes.

Deux systèmes de câblodistribution à Hamilton déclarent des abonnés aux signaux éloignés bien que la SPDAC estime qu'ils ne distribuent que des signaux locaux. Ces signaux et leurs abonnés ne sont pas inclus ici. En prenant ces abonnés en ligne de compte, on en arrive aux résultats du Tableau 1.

TABLE 9: CABLE OPERATORS REPORTING SYSTEMS CARRYING NO DISTANT SIGNALS

TABLEAU 9: CÂBLODISTRIBUTEURS NE DISTRIBUANT AUCUN SIGNAL ÉLOIGNÉ

SYSTEMS CARRYING NO DISTANT SIGNALS / SYSTÈMES NE DISTRIBUANT AUCUN SIGNAL ÉLOIGNÉ			
LICENSED SERVICE AREA / ZONE DE DESSERTE AUTORISÉE	COMPANY NAME / NOM DE L'ENTREPRISE	NUMBER OF SYSTEMS / NOMBRE DE SYSTÈMES	TOTAL NUMBER OF RESIDENTIAL SUBSCRIBERS WITHIN THESE SYSTEMS / NOMBRE TOTAL D'ABONNÉS RÉSIDENTIELS À CES SYSTÈMES
SMALL SYSTEMS / PETITS SYSTÈMES			
4268	VIDÉOTRON LTÉE	12	5,190
4280	SERVICE DE RADIO RÉJEAN DUMOULIN INC	1	278
4295	TÉLÉDISTRIBUTION BERTRAND FORTIN	1	235
4314	RIVIÈRE-À-CLAUDE TV ENRG	1	102
4328	VIDÉOTRON LTÉE	3	1,057
4356	CLAUDE BRISEBOIS ENRG	1	784
4456	TÉLÉVAL INC	1	182

5170	GORE BAY COMMUNITY T.V.	1	156
5348	NORCOM TELECOMMUNICATIONS LTD	1	25
6070	THE OUILLARD IMPLEMENT EXCHANGE LIMITED	1	128
7310	PONTEIX T.V. CLUB	1	230
9022	BRITANNIA CABLEVISION	1	90
9100	RANKLIN RIVER VIDEO	1	82
TOTAL		**26**	**8,539**
	LARGE SYSTEMS / GRANDS SYSTÈMES		
4076	TRANSVISION PLUS INC	1	3,623
4136	TRANSVISION PLUS INC	1	17,028
4268	VIDÉOTRON LTÉE	19	120,706
4528	TRANSVISION PLUS INC	1	1,993
TOTAL		**22**	**143,350**

TABLE 10: CABLE OPERATORS REPORTING SYSTEMS CARRYING ONLY PARTIALLY DISTANT SIGNALS

TABLEAU 10: CÂBLODISTRIBUTEURS NE DISTRIBUANT QUE DES SIGNAUX PARTIELLEMENT ÉLOIGNÉS

SYSTEMS CARRYING ONLY PARTIALLY DISTANT SIGNALS

SYSTÈMES NE DISTRIBUANT QUE DES SIGNAUX PARTIELLEMENT ÉLOIGNÉS

LICENSED SERVICE AREA	COMPANY NAME	NUMBER OF SYSTEMS WITHIN THE LSA CARRYING SIGNALS THAT ARE DISTANT TO ONLY SOME OF THEIR SUBSCRIBERS	RESIDENTIAL SUBSCRIBERS TO THESE SYSTEMS WHO RECEIVE DISTANT SIGNALS	TOTAL NUMBER OF RESIDENTIAL SUBSCRIBERS TO THESE SYSTEMS
ZONE DE DESSERTE AUTORISÉE	NOM DE L'ENTREPRISE	NOMBRE DE SYSTÈMES DANS LA ZDA QUI DISTRIBUENT DES SIGNAUX QUI SONT ÉLOIGNÉS POUR UNE PARTIE SEULEMENT DE LEURS ABONNÉS	ABONNÉS RÉSIDENTIELS À CES SYSTÈMES QUI REÇOIVENT DES SIGNAUX ÉLOIGNÉS	NOMBRE TOTAL D'ABONNÉS RÉSIDENTIELS À CES SYSTÈMES
SMALL SYSTEMS / PETITS SYSTÈMES				
4268	VIDÉOTRON LTÉE	32	5,258	10,366
TOTAL		**32**	**5,258**	**10,366**
LARGE SYSTEMS / GRANDS SYSTÈMES				
4264	CF CABLE TV INC	1	179,449	217,419
4268	VIDÉOTRON LTÉE	33	230,773	409,301
5343	MACLEAN HUNTER	1	501	41,236

CABLE TV			
5385OAKVILLE CABLENET	1	65,940	78,156
5565GRAHAM CABLE TV/FM	1	2,366	86,466
5570MACLEAN HUNTER CABLE TV	1	42,046	129,298
5580ROGERS CABLE T.V.	1	135,832	386,712
9358ROGERS CABLE T.V.	1	70,737	77,422
TOTAL	**40**	**736,644**	**1,426,010**

NOTE:

The table gives the number of subscribers receiving distant signals, therefore there are 689,366 subscribers to large systems and 5,108 to small systems receiving only local signals.

REMARQUES:

Le tableau donne le nombre d'abonnés recevant des signaux éloignés; il y a donc 689 366 abonnés aux grands systèmes et 5 108 abonnés aux petits systèmes qui ne reçoivent que des signaux locaux.

TABLE 11: DUPLICATE DISTANT SIGNALS – LARGE SYSTEMS BY PROVINCE AND LANGUAGE

TABLEAU 11: SIGNAUX ÉLOIGNÉS JUMEAUX DISTRIBUÉS PAR LES GRANDS SYSTÈMES VENTILÉS PAR PROVINCE ET PAR LANGUE

	ALL DUPLICATES TOUS LES SIGNAUX JUMEAUX		FRENCH DUPLICATES SIGNAUX JUMEAUX FRANÇAIS		CANADIAN ENGLISH DUPLICATES SIGNAUX JUMEAUX CANADIENS ANGLAIS		US DUPLICATES SIGNAUX JUMEAUX AMÉRICAINS	
	NUMBER NOMBRE	INSTANCES UNITÉS DE RÉCEPTION	NUMBER NOMBRE	INSTANCES UNITÉS DE RÉCEPTION	NUMBER NOMBRE	INSTANCES UNITÉS DE RÉCEPTION	NUMBER NOMBRE	INSTANCES UNITÉS DE RÉCEPTION
NEWFOUNDLAND / TERRE-NEUVE	0	0	0	0	0	0	0	0
P.E.I / Î.-P.-É	0	0	0	0	0	0	0	0
NOVA SCOTIA / NOUVELLE-ÉCOSSE	5	36,683	0	0	4	7,236	1	29,447

NEW BRUNSWICK / NOUVEAU-BRUNSWICK	4	6,822	1	1,507	3	5,315	0	0
QUEBEC / QUÉBEC	106	606,782	92	472,468	8	86,806	6	47,508
ONTARIO	116	3,479,349	4	136,890	51	1,319,888	61	2,022,571
MANITOBA	3	10,728	0	0	3	10,728	0	0
SASKATCHEWAN	2	6,373	0	0	2	6,373	0	0
ALBERTA	47	1,010,095	1	101,376	29	404,212	17	504,507
B.C. / C.-B.	33	206,500	0	0	16	59,051	17	147,449
TOTAL	**316**	**5,363,332**	**98**	**712,241**	**116**	**1,899,609**	**102**	**2,751,482**

NOTES:

In 1989, eight large systems, accounting for 2.98 per cent of subscribers, carried duplicates of local signals as their only distant signals. In 1991, there were seven large systems, accounting for 2.60 per cent of subscribers carrying duplicates of local signals as their only distant signals.

Duplicate signals accounted for 18.2 per cent of distant signal instances in large systems in 1989 and 19.0 per cent in 1991.

There were 316 duplicate distant signals carried by 180 large systems. Close to 2.3 million residential subscribers to large systems received one or more duplicate distant signals. Almost half of these (1.1 million) received only one.

REMARQUES:

En 1989, huit grands systèmes, représentant 2,98 pour cent des abonnés, distribuaient des signaux jumeaux de signaux locaux comme seuls signaux éloignés. En 1991, sept grands systèmes, représentant 2,60 pour cent des abonnés, distribuent des signaux jumeaux de signaux locaux comme seuls signaux éloignés.

Les signaux jumeaux représentaient 18,2 pour cent des unités de réception de signaux éloignés des grands systèmes en 1989 et 19,0 pour cent en 1991.

Il y avait 316 signaux éloignés jumeaux distribués par 180 grands systèmes. Près de 2,3 millions d’abonnés résidentiels aux grands systèmes recevaient au moins un signal éloigné jumeau. Près de la moitié de ceux-ci (1,1 million) n’en recevaient qu’un.

TABLE 12: MONTHLY BASIC CABLE RATES

TABLEAU 12: FRAIS MENSUELS POUR LE SERVICE DE BASE DU CÂBLE

Monthly Basic Cable Rates (in dollars)	Number of Subscribers	Number of Systems
Frais mensuels pour le service de base (en dollars)	Nombre d’abonnés	Nombre de systèmes

0 ≤ basic rate < 5 0 ≤ frais de base < 5	0	0
	463,638	36
5 ≤ basic rate < 10 5 ≤ frais de base < 10		
10 ≤ basic rate < 15 10 ≤ frais de base < 15	4,355,678	214
15 ≤ basic rate < 20 15 ≤ frais de base < 20	1,473,716	185
20 ≤ basic rate < 25 20 ≤ frais de base < 25	21,355	24
25 ≤ basic rate 25 ≤ frais de base	1,099	3
Total	**6,315,486**	**462**

	Small Systems Petits systèmes	Large Systems Grands systèmes	All Systems Tous les systèmes
Mean Rate Charged / Taux moyen exigé	$16.53	$13.75	$14.91
Median / Médiane	$17.08	$11.75	$14.76
Minimum	$5.00	$5.00	$5.00
Maximum	$25.84	$23.78	$25.84
Mean Rate Paid / Taux moyen payé	$15.76	$13.21	$13.24
Number of Systems Reporting / Nombre de systèmes déclarés	193	269	462
Number of Subscribers to these Systems / Nombre d'abonnés à ces systèmes	64,602	6,250,884	6,315,486

The companies in the CRRA database who provided a figure for the basic rate account for 6.3 million subscribers out of the total of 6.9 million. This data should be used with caution because only 17 per cent of systems reported a figure for the basic cable rate. These represent 54 per cent of large systems and only nine per cent of small systems. This makes the data more reliable for large systems than for small systems.

The average rate paid by subscribers is fairly reliable because the systems reporting account for over 6.3 million subscribers. For small systems, those reporting account for only 12 per cent of subscribers. The data concerning the minimum and maximum rates paid should also not be relied upon because of the weakness in the data and the difference with the results found in the last decision.

All the figures cited above were derived by comparing the statistics in the table with those in the "Systems as reported" column of Table 7.

TABLE 13: COMPARISON OF THE AVERAGE NUMBER OF BASIC DISTANT SIGNALS RECEIVED BY SUBSCRIBERS IN EACH PROVINCE IN 1989 AND IN 1991

TABLEAU 13: COMPARAISON ENTRE LE NOMBRE MOYEN DE SIGNAUX ÉLOIGNÉS DE BASE REÇUS EN 1989 ET EN 1991 PAR LES ABONNÉS DANS

CHAQUE PROVINCE

PROVINCE	1989[1] ALL RESIDENTIAL SUBSCRIBERS TOUS LES ABONNÉS RÉSIDENTIELS		1991[3] DISTANT RESIDENTIAL SUBSCRIBERS ABONNÉS RÉSIDENTIELS À DES SIGNAUX ÉLOIGNÉS
NEWFOUNDLAND / TERRE-NEUVE	4.58	4.70	4.70
PRINCE EDWARD ISLAND / ÎLE-DU-PRINCE-ÉDOUARD	4.00	6.42	6.42
NOVA SCOTIA / NOUVELLE-ÉCOSSE	4.78	4.96	4.96
NEW BRUNSWICK / NOUVEAU-BRUNSWICK	5.68	5.83	5.83
QUEBEC / QUÉBEC	4.27	2.55	4.06
ONTARIO	4.16	4.06	4.48
MANITOBA	4.54	5.00	5.00
SASKATCHEWAN	4.22	4.25	4.25
ALBERTA	5.27	6.19	6.19
BRITISH COLUMBIA[2] / COLOMBIE-BRITANNIQUE[2]	5.51	5.61	6.04
TOTAL	**4.56**	**4.26**	**4.91**

1. The data for 1989 was available only for large systems.
2. The data for British Columbia, the Yukon and Northwest Territories was grouped to facilitate comparison with the data for 1991.
3. The data for 1991 is for large systems and is from Table 2.
1. Les données pour 1989 n'étaient connues que pour les grands systèmes.
2. Les données pour la Colombie-Britannique, le Yukon et les Territoires du Nord-Ouest ont été regroupées pour faciliter la comparaison avec les données de 1991.
3. Les données pour 1991 visent aussi les grands systèmes et proviennent du tableau 2.

TABLE 14: COMPARISON OF THE AVERAGE NUMBER OF BASIC DISTANT SIGNALS RECEIVED IN QUEBEC AND IN THE REST OF CANADA IN 1989 AND IN 1991

TABLEAU 14: COMPARAISON ENTRE LE NOMBRE MOYEN DE SIGNAUX ÉLOIGNÉS DE BASE REÇUS AU QUÉBEC ET DANS LE RESTE DU CANADA EN 1989 ET EN 1991

	1989[1] ALL RESIDENTIAL SUBSCRIBERS TOUS LES ABONNÉS RÉSIDENTIELS		1991[2] DISTANT RESIDENTIAL SUBSCRIBERS ABONNÉS RÉSIDENTIELS À DES SIGNAUX ÉLOIGNÉS
QUEBEC / QUÉBEC	4.27	2.55	4.06
REST OF CANADA /	4.64	4.76	5.08

1. The underlying data is from the evidence tabled in the 1990 hearing.
2. This can be computed from the data in TABLES 1 and 2.
1. Ces données proviennent de la preuve déposée lors de l'audience de 1990.
2. Ces chiffres sont fondés sur les données figurant aux tableaux 1 et 2.

TABLE 15: SUPERSTATION CARRIAGE

TABLEAU 15: DISTRIBUTION DE SIGNAUX DE SUPERSTATIONS

	SUPERSTATION SIGNAL INSTANCES UNITÉS DE RÉCEPTION DE SIGNAUX DE SUPERSTATIONS	SUBSCRIBERS ABONNÉS	AVERAGE NUMBER OF SIGNALS PER SUBSCRIBER NOMBRE MOYEN DE SIGNAUX PAR ABONNÉ
SEPTEMBER 91 / SEPTEMBRE 91	1,062,897	7,341,502	0.1448
OCTOBER 91 / OCTOBRE 91	1,179,497	7,400,956	0.1594
NOVEMBER 91 / NOVEMBRE 91	1,193,879	7,482,178	0.1596
DECEMBER 91 / DÉCEMBRE 91	1,242,066	7,514,572	0.1653
JANUARY 92 / JANVIER 92	1,254,271	7,537,207	0.1664
FEBRUARY 92 / FÉVRIER 92	1,266,779	7,555,794	0.1677
MARCH 92 / MARS 92	1,409,083	7,569,452	0.1862
APRIL 92 / AVRIL 92	1,548,179	7,575,064	0.2044
MAY 92 / MAI 92	1,629,030	7,550,114	0.2158

SOURCE: CCC-110, August 6, 1992.

SOURCE: SPDAC-110, 6 août 1992.

XI. APPENDIX III / ANNEXE III: ROYALTY ESTIMATES BASED ON THE 1991 DATA / MONTANT ESTIMATIF DES DROITS FONDÉ SUR LES DONNÉES DE 1991

The following estimates are based on the March, 1991 data, as reported by cable operators. The two columns show what the 1990-91 and 1992-94 tariffs would have generated in 1991.

	1990-91 TARIFF TARIF 1990-1991	1992-94 TARIFF TARIF 1992-1994
SMALL SYSTEMS / PETITS SYSTÈMES	$222,900.00	$222,900.00
SYSTEMS IN QUEBEC SERVING 1,001 TO 6,000 PREMISES / SYSTÈMES SITUÉS AU QUÉBEC DESSERVANT ENTRE 1	$1,015,348.80	$337,583.04

001 ET 6 000 LOCAUX		
SYSTEMS IN THE REST OF CANADA SERVING 1,001 TO 6,000 PREMISES / SYSTÈMES SITUÉS AILLEURS QU'AU QUÉBEC DESSERVANT ENTRE 1 001 ET 6 000 LOCAUX	$2,233,359.60	$1,990,911.60
SYSTEMS IN QUEBEC WITH MORE THAN 6,000 PREMISES / SYSTÈMES SITUÉS AU QUÉBEC DESSERVANT PLUS DE 6 000 LOCAUX	$5,916,296.00	$3,460,170.00
SYSTEMS IN THE REST OF CANADA SERVING MORE THAN 6,000 PREMISES/ SYSTÈMES SITUÉS AILLEURS QU'AU QUÉBEC DESSERVANT PLUS DE 6 000 LOCAUX	$35,571,068.00	$35,966,868.00
TOTAL	**2 255,00**	**$41,978,432.64**

NOTES:

1. These estimates are based on residential subscribers only.
2. The discount for francophone markets is applied only in Quebec.
3. A number of systems serving between 1,001 and 6,000 premises which paid a scaled rate in 1990-91 will now pay a higher rate because of subsection 7(3) of the 1992-94 tariff. These systems are included with systems serving between 1,001 and 6,000 premises for the 1990-91 calculations, but with systems serving more than 6,000 premises for the 1992-94 calculations. They are also assumed to have paid at the lower rate for 1990-91, and to be paying at the higher rate for 1992-94. This explains, for example, the amount indicated for 1992-94 with regard to Quebec systems is less than half of what would have been paid under the 1990-91 tariff for systems serving between 1,001 and 6,000 premises, and more than half for those serving more than 6,000 premises.

REMARQUES:

1. Les chiffres qui précèdent sont fonction uniquement des abonnés résidentiels.
2. La réduction pour les marchés francophones est appliquée uniquement au Québec.
3. Certains systèmes desservant entre 1 001 et 6 000 locaux qui ont payé un taux réduit en 1990-1991 sont dorénavant assujettis à un taux plus élevé, à cause du paragraphe 7(3) du tarif 1992-1994. Ces systèmes sont comptés comme desservant entre 1 001 et 6 000 locaux dans le calcul applicable à 1990-1991, et comme desservant plus de 6 000 locaux aux fins du calcul applicable à 1992-1994. On a aussi tenu pour acquis qu'ils payaient un taux inférieur pour 1990-1991, et un taux plus élevé pour 1992-1994. Ceci explique, par exemple, que les montants attribués au Québec pour 1992-1994 soient inférieurs à la moitié des droits qui auraient été versés aux termes du tarif 1990-1991 dans le cas des systèmes desservant entre 1 001 et 6 000 locaux, et supérieurs à la moitié de ces droits dans le cas des systèmes desservant plus de 6 000 locaux.