Barry Kiefl, President, Canadian Media Research Inc., "Should the CRTC Make Policy Based on Research Not Available to the Public? Example: *The Way Forward*" Remarks, Rebooting Canada's Communications Legislation, A conference to examine changes to Canada's broadcasting and communications legislation (Ottawa: May22-23, 2015), Session 4

<u>Introduction:</u> The CRTC's new policy (*The Way Forward*) reducing the Canadian content requirements of Canadian broadcasters appears to be based largely on audience research from Numeris (BBM Canada) and limited financial data from CRTC. Very little other empirical or audience research is referenced in the policy; there is one brief reference to a Harris/Decima public opinion survey commissioned by the CRTC as part of the Let's Talk TV process. Also, the policy cites an internal empirical analysis of repeat factors on specialty channels but provides no methodological or other details about this analysis.

The primary question we examine is whether CRTC's use of the Numeris research in *The Way Forward* is fair to all parties, especially the public, who have no direct access to the Numeris data. Only broadcasters, advertisers, advertising agencies and a restricted list of licensees can subscribe to Numeris data and must agree to strict rules on publishing of data. No individual member of the public is a Numeris subscriber.

The Commission seems not to have presented its Numeris analysis prior to or during the policy hearing, yet relied heavily on it in the policy. Secondarily, we ask if the research as presented justifies the ends, that is, the abolition or reduction of Canadian content requirements and a call to produce "compelling programming that caters to world audiences"?

In addition, we examine whether the CRTC has correctly interpreted industry financial data, which the Commission analyzed and presented in the policy but did not share with the public prior to or at the public hearing. These financial data are available to the public on the CRTC web site but the Commission's analysis and interpretation only appeared in the policy.

CMRI is not challenging the intent of the new policy, that is, to improve prime time Canadian programming. In fact, the policy echoes some key findings of a study on Canadian program audiences CMRI conducted for the CRTC in 2008[1]. On the other hand, the policy ignores many of the findings in a study of trends in international TV programming and audiences CMRI conducted for the Commission in 2003[2].

[1] http://www.crtc.gc.ca/eng/publications/reports/cmri080605.htm

[2] International TV Programming and Audience Trends 1996-2001, CMRI, 2003.

<u>How Much of a Threat is Online Viewing, New Devices, etc?</u> *The Way Forward* makes numerous generalizations about Canadian viewers and their tendencies without any supporting research. For example, in the introduction it is stated:

> "Over the next several years, Canadians will continue to migrate from scheduled and packaged programming services to on-demand and tailored programs. They will become more active viewers who want even greater control over the programs they watch. Canadian viewers, like viewers around the world, will increasingly consume content on all kinds of devices, and will demand new and innovative approaches to programming.
>
> …New developments in technology, led by innovative Internet-based services and devices, are already both responding to pent-up consumer demand for content and leading to changes in consumption behaviour among many Canadians (e.g., online and mobile viewing, binge viewing, exposure to new, global sources of content)."

There are many such assertions in the policy about Canadian viewing behaviour, usually lacking quantification, which are based on unknown sources. It is important to note the U.S. researcher Sternberg points out there are many "studies done by companies that benefit from people thinking TV viewing is declining.[3]" He recommends relying on ratings data rather than surveys that invariably over-estimate the effects of new media.

The most important CRTC assertion about viewing behaviour relates to linear viewing behaviour:

> "…shifting viewer behaviour, whereby viewers increasingly seek out and choose to consume programming on a program-by-program basis rather than through linear channels, will also have a significant impact on the funding model."

The Chairman of the CRTC subsequently told the Globe and Mail that it was a fait accompli: "…the environment, both the technological environment and how people have chosen to interact with it on the various platforms, has changed."[4]

The Commission did not examine Numeris data to determine if the use of linear TV has changed significantly in recent years, especially the past year or two, even though it cites Numeris data several times in the policy. Have viewers reduced their use of traditional TV, either by time shifting with PVRs or by use of video-on-demand or online streaming services? The Commission proudly states it is not looking in the rear-view

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[3] http://www.mediapost.com/publications/article/247980/traditional-television-viewing-continues-to-grow.html

[4] http://www.theglobeandmail.com/report-on-business/crtc-defends-viewer-centric-decision-on-tv-subscriptions/article23570039/

mirror but looking to the future. We are not suggesting looking in the rear-view mirror but rather the mirror of the current situation.

Services such as Netflix and most online and on demand services are not measured by ratings companies either in Canada or the U.S. but one can examine viewing levels of traditional TV to determine if there have been any substantial audience losses to those services. The CRTC's Communications Monitoring Report contains such data and more recent data are available from TVB Canada.

TVB's weekly analysis of Numeris data[5], a rare case of Numeris permitting data publication, reveals that viewing to traditional TV has declined very slightly, from about 27.7 hours per week per capita in 2009-10, i.e., the year prior to the introduction of Netflix, to about 26.9 hours per week today (52-week period ending March 1, 2015). Also noteworthy is that TVB's analysis shows that less than 8% of viewing today is time shifted using PVRs; and PVR use has not grown the past two years. (Our analysis of Numeris weekly viewing hours confirms TVB's analysis.)

Viewing levels among younger adult viewers have shown somewhat greater losses but they are a small cohort, more likely to subscribe to services such as Netflix. Most other cohorts have seen their TV viewing habits little changed.

The latest development in the U.S. is the online bundling of live TV. Sling TV and Apple TV are or plan to offer mainstream channels online. But these services are like a mini-cable TV company and likely won't affect traditional TV. If anything, they will increase viewing. It is unclear if such services will be launched in Canada, just as Amazon Fire, Hulu, HBO Now and CBS Now have not launched here. Instead, major Canadian cable/satellite operators have introduced shomi and Crave TV to compete with their own services.

As for concerns that Canadians are abandoning BDUs, just released data from the CRTC show that while some legacy companies such as Rogers are losing subscribers, they are being picked up by new entrants such as Telus and Bell Fibe (see Table 1).

[5] http://www.tvb.ca/pages/PPMstats_htm

Table 1

Number of Subscribers to Main BDUs
2013 vs. 2014

	2013	2014	% Diff.
Bell Fibe	582,753	868,858	49.1
Bell DTH	1,787,259	1,678,335	-6.1
Cogeco	834,771	797,165	-4.5
Videotron	1,691,168	1,689,235	-0.1
Rogers	2,162,951	2,049,576	-5.2
Shaw Cable	2,040,247	1,957,629	-4.0
Shaw DTH	903,565	880,623	-2.5
Telus	626,767	722,774	15.3
Total	10,629,481	10,644,195	0.1

Source: CRTC

Overall, traditional "linear" TV has all but maintained its audience and it appears the threat from non-linear services is real but may be exaggerated. The impact of online TV viewing five years after the introduction of Netflix amounts to less than a 3% loss in audiences to traditional TV in net terms. Why? It may be that viewers are continuing to use traditional TV and simply adding nonlinear viewing to their total viewing time, although online services have smaller audiences than many believe.

YouTube boasts that one-billion people spend six-billion hours monthly watching YouTube videos. Sounds impressive and even the late media critic of the New York Times touted the YouTube numbers[6]. Putting aside the fact that these numbers are generated by YouTube's server software, which tends to exaggerate usage and measures computers not people, are they really that extraordinary?

No. According to Numeris, Canadians alone spend about four-billion hours watching traditional TV per month (26.9 weekly hrs x 4 weeks x 35 million population). Americans, according to Nielsen, spend almost 40-billion hours and worldwide, according to Eurodata/ITU, time spent watching traditional TV easily surpasses 500-billion hours per month. YouTube, which has been around for almost a decade, is rounding error in the ratings.

Pundits tend to ignore this, preferring to talk about impending change and the death of traditional TV. Incidentally, comScore, an independent measurement service, puts YouTube's worldwide usage at less than three-billion hours per month (September, 2014).

[6] http://www.nytimes.com/2014/10/13/business/media/youtube-takes-manhattan-.html?_r=1

Third-party research[7] estimates that in 2014 Netflix's worldwide audience was even smaller, about one-billion hours per month, three billion if you accept Netflix server data. The reported 3.1 million[8] Canadian households who subscribed to Netflix at the end of 2014 are not stealing away much, if any, of the audience to traditional TV.

Therefore, the Numeris data indicate that the Commission may have exaggerated the impact of online TV viewing on traditional TV today and perhaps in future (on TV sets or mobile devices).

Should Cancon Be 0% in Daytime? The CRTC policy makes no reference to the Numeris weekly per capita viewing data referred to above but other Numeris data are invoked to support the new policy. The policy refers to Numeris viewing data from the 2013-14 broadcast year, which presumably Commission staff analyzed.

The new policy does away with Canadian content requirements for private conventional TV stations in all hours but 6pm-11pm. The policy is based in large measure on Numeris data stating:

> "Data from Numeris for the 2013-2014 broadcast year and covering both linguistic markets shows that there is about five times more viewing to conventional television stations between 8 p.m. and 10 p.m., Monday to Friday, than at any hour during the rest of the day outside the evening broadcast period, and two to four times more viewing from 6 p.m. to 8 p.m. and 10 p.m. to 11 p.m. Thus, this evening prime time period is still when most viewers are watching conventional television stations."

Our analysis of Numeris data shows that viewing in many parts of the day is much higher than stated in the CRTC policy. However, this analysis can't be published because the public release of ratings data is tightly controlled by Numeris, unlike the U.S. where anyone is free to subscribe to and publish their analysis of Nielsen data. Even the Commission is generally prohibited from publishing Numeris data without the latter's permission, publishing only limited data in the annual Communications Monitoring Report.

Otherwise, Numeris data usually only appear in promotional material of broadcasters and other organizations. Independent or academic analysis, such as that done by the Pew Institute in the U.S., almost never appears. Canada may be the only advanced country in the world that doesn't even provide 'overnights' to the media, which is most likely a major reason why Canadians do not discover Canadian TV programming.

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[7] http://247wallst.com/technology-3/2014/09/29/how-much-time-do-viewers-really-spend-with-netflix/

[8] http://www.nytimes.com/2015/02/12/arts/international/netflix-taps-into-a-growing-international-market.html?smid=tw-nytimes&_r=3

In my opinion the Numeris policy to limit access to ratings data has damaged the Canadian TV industry and has probably resulted in hundreds of millions of lost advertising revenue. Ironically, the industry owns and controls Numeris but haven't adapted the access policy for the Internet era. It is not for financial reasons, since Numeris is a non-profit entity which restricts voting membership to broadcasters, advertisers and advertising agencies. If the Commission was a voting member and on the board of Numeris, it could push for a change in policy.

The public can not review the Commission's analysis of viewing behaviour. But what is known from publicly available data is that over 50% of total viewing takes place outside of prime time, defined as 6-11pm, and over 60% if prime time is defined as 7-11pm, which seemingly contradicts the importance the Commission places on prime time. (See appended chart.)

Thus, the Commission's new policy reducing Canadian content requirements for private conventional broadcasters appears to be based on incomplete information about Canadian viewing habits. Unfortunately, the public is not able to verify whether this is the case or not.

<u>Should Cancon for Pay & Specialty be Reduced to 35%?</u> To justify establishing a Canadian content level of 35% for most pay and specialty channels throughout the day, including prime time, the Commission relies on Numeris data:

> "Numeris data for the 2013-2014 broadcast year covering both linguistic markets demonstrate that the peak evening period is considerably less significant for discretionary services than it is for conventional stations."

Conventional stations do have higher audiences in prime time 7-11pm compared to their whole day audience. But the vast majority of pay and specialty channels are similar. A number of pay and specialty channels have larger prime time audiences in relative terms than conventional stations. A number of others are similar to conventional stations. The specialty channels that have "considerably" smaller prime time audiences tend to be children's and news channels. Unfortunately, the Commission did not make specific audience information available and CMRI is not able to publish its analysis due to Numeris copyright claims on all its data.

Thus, the Commission's policy to reduce Canadian content requirements for pay and specialty channels appears to be based on misinterpretation of Numeris audience data in prime time versus the rest of the viewing day but, again, there is no way to publicly verify this.

<u>Do We Have Sufficient Financial Resources to Improve Cancon?</u> The Commission states in its policy that: "In total, supports for programs made by Canadians were worth more than $4.1 billion in 2012-2013." Jean Pierre Blais is quoted in the news release

accompanying the policy as saying: “We have more than enough money and talent to tell our stories.”

The $4.1 billion arrived at by the Commission includes provincial and federal tax credits, CMF funding and a variety of lesser sources. However, some two-thirds ($2.7 billion) of the $4.1 billion consists of direct support from private and public TV broadcasters.

The policy to reduce Canadian content requirements in daytime is apparently a mechanism intended to increase budgets for prime time programming, while spending less in other program areas. A zero sum game, if there is no additional money. The issue here is that the majority of the broadcasters’ $2.7 billion is spent on news, public affairs, information and sports, money that the Commission would presumably not expect to be shifted to other program categories.

The 2013 data, available on the CRTC web site, reveal that about two-thirds of the financial support provided by Canadian broadcasters goes to news, public affairs, information and sports. We assume the Commission is not expecting broadcasters to re-direct news and sports budgets to Canadian drama and comedy programming for “international audiences,” one of the goals of the new policy.

Table 2

Financial Support Provided by Canadian Broadcasters by Program Category 2013

	CBC/SRC	Private TV	Specialty	Total
News	$212,876,470	$355,286,672	$223,722,699	$791,885,841
Public Affairs (Doc.)	$31,535,678	$7,893,658	$110,317,368	$149,746,704
Information	$63,770,973	$31,128,315	$143,021,870	$237,921,158
Sports	$127,730,246	$6,489,622	$412,050,810	$546,270,678
Sub-Total	$435,913,367	$400,798,267	$889,112,747	$1,725,824,381
Drama & Comedy	$175,538,206	$65,958,833	$140,478,102	$381,975,141
Miscellaneous	$113,140,085	$138,657,575	$201,987,058	$453,784,718
Total	$724,591,658	$605,414,675	$1,231,577,907	$2,561,584,240

Source: CRTC (excludes Pay TV)
http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2013/psp2013_13.htm
http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/tv2013/tv2013.htm

In 2013 broadcasters spent only $381 million on the category of programming, drama and comedy, which would likely be exportable. Even with tax credits and CMF funding, it is likely that only about $600 million in total is presently spent on the type of programming the policy is intended to enhance. And that money supports both English and French programs.

Perhaps some of the budget spent on miscellaneous programs could be re-directed to prime time drama/comedy but much of that funding goes to successful reality programs, award shows, etc. Therefore, is the Commission right in concluding that there is "enough money and talent to tell our stories"? The answer might be yes, if all or much of the $4.1 billion spent on Canadian programming was available for this purpose. But since much of the funding is tied up in essential programs areas such as news and sports, it seems doubtful that the Commission is right in its view, especially if we look at international experience.

Producers in other countries face the same challenges as Canadian TV producers and likewise have had limited international success compared to the U.S.

In a 2003 study of trends in international programming conducted for CRTC we found that most European countries, like Canada, had a large percentage of "fiction" programming imported from the U.S. At the time we reported:

> "Contrary to popular belief, the U.S. has a very substantial and growing presence on European movie screens and on television. U.S. television, movie and video program sales in Europe are substantial and dwarf European video sales in the United States. U.S. sales grew from $5.3 billion (U.S.) in 1995 to $9.0 billion (U.S.) in 2000, an increase of about 70%. Meanwhile, European cinema and video sales to North America, while growing, accounted for only $837 million (U.S.) in the year 2000, less than one-tenth U.S. program sales in Europe."

The Commission would benefit from knowing the value of international program sales today. But a recent update from the European Audiovisual Observatory hints that things have not changed much in the past decade, if anything the dominance of the U.S. has grown[9]. In 2013 over 60% of fiction programming in Europe emanated from non-European sources, mostly the U.S. (see Chart 1). Even in the U.K. almost three quarters of fiction (drama series, movies, comedy, etc.) was mostly American.

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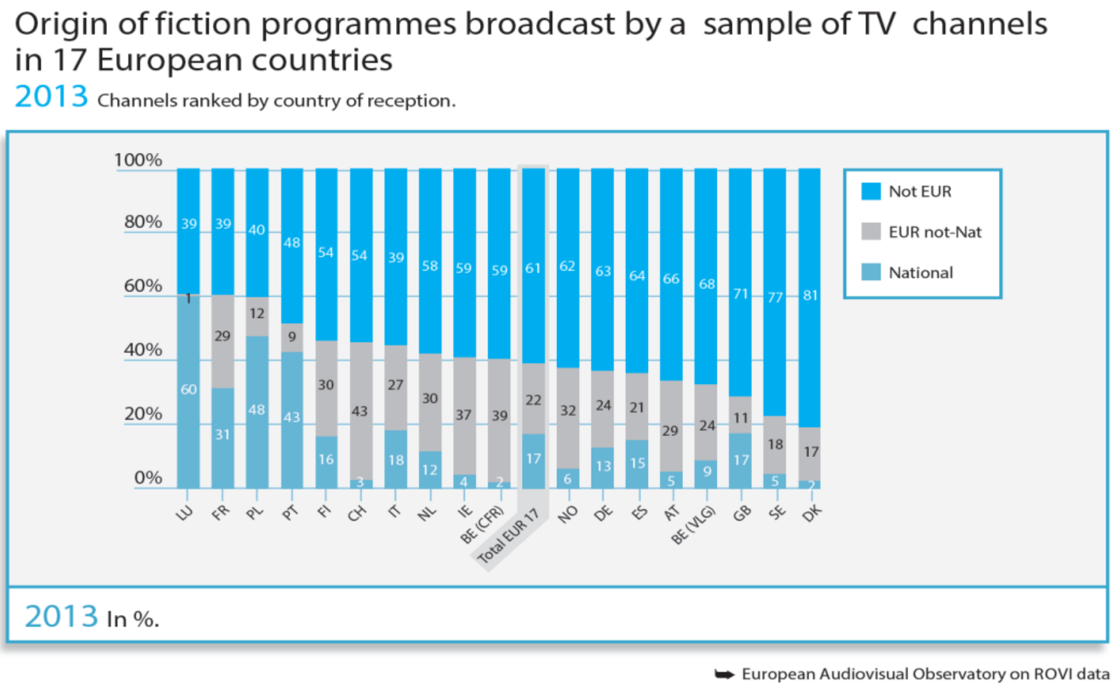
9 http://www.theregister.co.uk/2014/07/21/us_video_even_more_dominant_as_european_initiatives_fail/

Chart 1



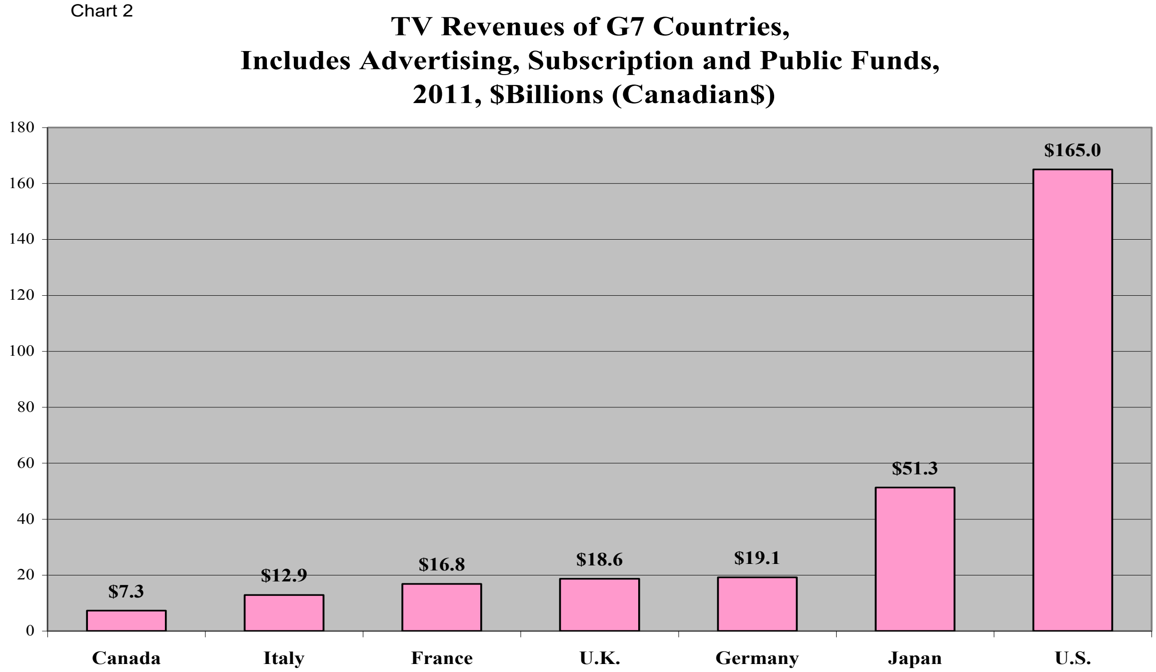
http://www.obs.coe.int/-/pr-fiction-on-european-tv-channels

Thus, Europeans, like Canadians, also have access to a great deal of Hollywood programming, albeit on their own networks. Any policy designed to improve the quality of Canadian programming must recognize that it will be competing mostly with Hollywood, which is funded at levels Canadian producers can only dream about.

In 2003 CMRI reported that European and U.S. broadcasting had substantially more revenue than Canadian broadcasting to support programming. This remains true today, as shown in Chart 2. Canada remains well below all other G7 countries in terms of broadcasting revenue.

The U.S. alone had 23 times the combined English and French revenues of Canadian broadcasting in 2011. On an English-only basis, the U.S, system generates over 30 times that of the Canadian English TV system ($165 billion vs. ~$5 billion). France had roughly eight times the TV revenue of Canadian French TV ($16.8 billion vs. ~$2 billion).

Chart 2



Source: Ofcom (converted to Canadian$)

Thus, the limited funding that can be redirected to improve prime time drama/comedy programming leads CMRI to question the conclusion that there is enough money in the system to achieve the goals of the new policy. Especially true, if the goal is to try and export programming to the U.S. or other countries that have far greater resources to compete on the world stage.

Conclusion:

-Numeris (BBM Canada) trend data published by TVB indicate that the Commission may have exaggerated the impact of online TV viewing on traditional TV today and perhaps into the future (whether on TV sets or mobile devices). Traditional, linear TV viewing has declined less than 3% since the introduction of Netflix, Apple TV, etc. some five years ago. Moreover, concerns that Canadians are cutting the cord and abandoning Canadian BDU's are overblown--in 2014 the number of BDU subscribers was basically unchanged, according to CRTC data just released.

-Numeris data also show that the Commission's new policy reducing Canadian content requirements for private conventional broadcasters appears to be based on incomplete information about Canadian viewing habits. Many hours outside of prime time have larger audiences than the new policy indicates, although the viewing data have not be published for public discussion.

-The Commission's policy to reduce Canadian content requirements for pay and specialty channels also appears to be based on a misinterpretation of Numeris audience data in prime time versus the rest of the viewing day. Many specialty channels are as reliant as conventional stations on prime time for their audiences. However, the Commission did not release any specific viewing data during the policy process which could be examined by interested parties.

- Subscription to Numeris data is expensive, beyond the means of an individual, and subscribers are generally prohibited from publishing Numeris data. Even some major TV production companies cannot afford the fees. In future, if it is to use Numeris data, it would be beneficial if the CRTC published its analysis prior to or during the policy hearing so that all parties are privy to the same information and are able to assess its meaning. The Commission, if it is serious about promoting Canadian programming, should champion open access to and release of all ratings data.

-The Commission has seemingly overestimated the amount of funding that can be devoted to improve prime time drama/comedy programming. Only a small share of the $4.1 billion spent on Canadian programming identified by the CRTC is spent on drama/comedy and it is a tiny fraction of the program funding in other countries, especially the U.S. Has the policy set a goal that can never be realized with existing funding? CMRI believes that the Commission might better serve the policy making process by discussing its interpretation of industry financial data earlier in the policy-making process, most importantly during the public hearing.

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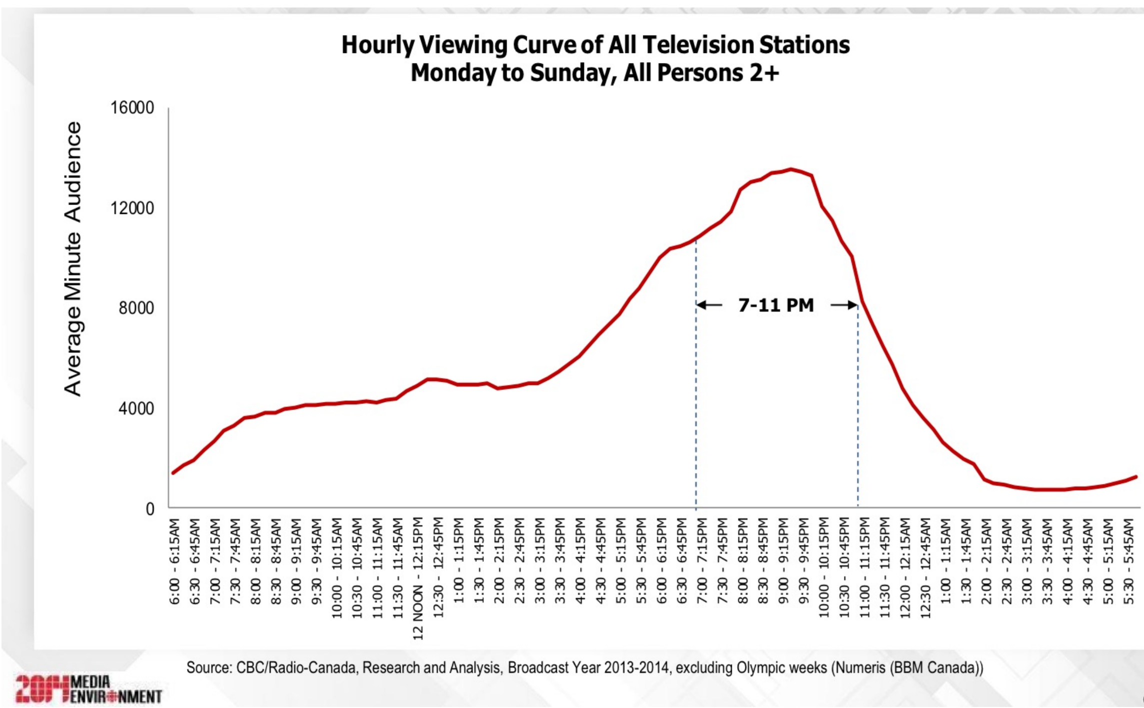
Hourly Viewing Curve of All Television Stations
Monday to Sunday, All Persons 2+
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12000
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4000
0
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6:30 - 6:45AM
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Source: CBC/Radio-Canada, Research and Analysis, Broadcast Year 2013-2014, excluding Olympic weeks (Numeris (BBM Canada))