



Via email: info@pco-bcp.gc.ca

June 27, 2017
Governor in Council
Office of the Clerk of the Privy Council
1000 - 85 Sparks Street
Ottawa, Ontario
K1A 0A3

Attn: Clerk of the Privy Council

Dear Mr. Wernick:

Re: Petition to the Governor in Council under Subsection 28(1) of the *Broadcasting Act* to set aside or refer back for reconsideration and hearing Broadcasting Decisions CRTC 2017-149 and CRTC 2017-150

In accordance with Subsection 28(1) of the *Broadcasting Act* and the procedures established by the Governor in Council, please find below a Petition, submitted by the Writers Guild of Canada (WGC), seeking to refer back for reconsideration and hearing Broadcasting Decision CRTC 2017-149 and Broadcasting Decision CRTC 2017-150 issued by the Canadian Radio-television and Telecommunications Commission on May 15, 2017.

It is the WGC's respectful submission that, in establishing expenditure requirements for programs of national interest (PNI) that do not match historical spending levels, the Commission has derogated from the priority given to the attainment of the objectives of the broadcasting policy for Canada set out in Subsection 3(1) of the Act.

We thank you for your consideration of this Petition.

Sincerely,

Maureen Parker
Executive Director

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**Petition to the Governor in Council Under
Subsection 28(1) of the *Broadcasting Act***

**to set aside or
refer back for reconsideration and hearing**

Broadcasting Decision CRTC 2017-149

and

Broadcasting Decision CRTC 2017-150

**issued by the Canadian Radio-television and Telecommunications
Commission on May 15, 2017**

Submitted by:

The Writers Guild of Canada

June 27, 2017

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EXECUTIVE SUMMARY

This is a petition by the Writers Guild of Canada (“WGC” or “Petitioner”) pursuant to Subsection 28(1) of the *Broadcasting Act* (the “Act”) requesting that the Governor in Council make an order to set aside or refer back for reconsideration and hearing Decisions CRTC 2017-149 and 150 (the “Decisions”), issued on May 15, 2017, in which the Canadian Radio-television and Telecommunications Commission (the “Commission”) issued renewals of television service licences to Bell Media Inc. (“Bell”) and Corus Entertainment Inc. (“Corus”), respectively.

The WGC is the national association representing more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The Petitioner submits that the Decisions derogate from the attainment of the objectives of the broadcasting policy for Canada set out in Subsection 3(1) of the Act. In particular, in setting required expenditure levels for programs of national interest (“PNI”) at 5% of broadcasting revenues, the Commission failed to maximize support for Canadian programming or ensure a significant contribution from the independent production sector as mandated under subsections 3(1)(f) and 3(1)(i)(v) of the Act.

The Petitioner takes no position in this Petition on the Commission’s Decisions regarding the major French-language ownership groups, as set out in Decisions CRTC 2017-144 through 147, nor does the Petitioner necessarily seek to overturn the Commission’s decision (Decision CRTC 2017-151) to ascribe a 5% PNI level to Rogers Media Inc. (“Rogers”) in light of that licensee’s broadcast group make-up and estimated historical PNI expenditure levels.

The Petitioner was an Intervener in Broadcasting Notice of Consultation CRTC 2016-225 (the “Proceeding”) before the CRTC to consider renewals of the broadcast licences of television services owned and operated by the major English-language designated groups—Bell, Corus, and Rogers. At the outset of the Proceeding, the Commission acknowledged that PNI expenditures of the large English-language groups saw an annual decrease of 12.7%, dropping from a cumulative sum of \$158.5 million in the 2011-2012 broadcast year to \$105.4 million in the 2014-2015 broadcast year, which is a decline of \$53.1 million.

The Petitioner, along with other Interveners such as The Alliance of Canadian Cinema, Television and Radio Artists; Canadian Media Producers Association; and Directors Guild of Canada also submitted uncontroverted evidence to the effect that historic spending levels to PNI from Bell and Corus averaged 8% and 9% of broadcasting revenues, respectively.¹

¹ See, in particular, Analysis of Canadian Programming Expenditure and Programs of National Interest Proposals Filed by the English-Language Broadcast Groups as Part of Their Group Licence Renewal Applications, August 2016, by Mario Mota, Boon Dog Professional Services Inc. (the “Boon Dog Report”). As noted in the Boon Dog Report, these historical PNI spending levels are for the revised designated broadcast groups proposed by each of Bell, Corus, and Rogers for the new licence term given that each English-language broadcast group proposed (and the Commission approved) changes to the composition of each designated group. To be clear, these historical PNI spending levels are not for the existing composition of groups for the current licence term, which expires on August

This Petitioner's evidence on historic PNI spending levels at Bell and Corus was largely acknowledged and accepted by the Commission in Broadcasting Decision CRTC 2017-148, an explanatory policy decision ("Introductory Decision") that accompanied the Decisions.

Notwithstanding this evidence, the Commission determined that PNI levels for Bell, Corus, and Rogers for a new licence term of five years (from September 1, 2017 to August 31, 2022) should be established at 5%, on the primary basis that it would "standardize" PNI levels among the major broadcast groups.

Nothing in the Decisions, Introductory Decision, or the record of the Proceeding demonstrated that:

- A PNI level consistent with historic levels for Bell (i.e., at least 8%) and Corus (i.e., at least 9%) is unaffordable, unsustainable, or would in any way render maximum use of Canadian creative and other resources "impracticable" as that term is used in subsection 3(1)(f) of the Act; or
- Bell or Corus revenues or profits would decline over the next licence term in such a way as to cause a PNI level consistent with historic levels to become unaffordable, unsustainable, or "impracticable" as that term is used in subsection 3(1)(f) of the Act.

Moreover, nothing in the *Broadcasting Act* requires or even implies that "standardized contributions" represent an important broadcasting policy objective. They are at best a regulatory policy objective, and hence subservient to broadcasting policy objectives.

In granting greater weight to administrative concerns over clear and unequivocal Canadian programming and independent production policies, the CRTC has breached its obligations and derogated from the priority given to the attainment of the objectives of the broadcasting policy for Canada set out in Subsection 3(1) of the Act.

31, 2017. The historical PNI spending levels were calculated by analyzing historical spending on PNI for the services that each broadcast group proposed to include in its English-language designated group for the next licence term using the same and longstanding methodology used by the Commission (i.e., a three-year historical average using the most recent publicly available data at the time of the CRTC group licence renewal Proceeding and consistent with the approach used most recently in *Broadcasting Decision CRTC 2014-62*. While the Boon Dog Report ascribes a historical PNI spending level of 8% for the new Corus group, revised calculations prepared by Boon Dog after completion and submission of the report to the CRTC, as a result of revised PNI spending data filed by Corus in October 2016, place historical PNI levels at a higher 9% for Corus. Mr. Mota cited this revised 9% level for Corus at the CRTC public hearing (see, for example, [Transcript, November 30, 2016](#), at para. 4108).

Background and Context

Broadcasting Decision CRTC 2017-148, the Decisions that are the subject of this Petition, and licence decisions issued in respect of Rogers and the French-language ownership groups were the culmination of a process formally initiated by Notice of Consultation in June 2016², and based on the Commission's new Let's Talk TV Canadian Programming Policy.³

As noted in the 2015 Canadian Programming Policy:

228. PNI⁴ requirements were introduced in the English-language market in 2011, in the French-language market in 2012 and for CBC services in 2013. When the broadcasting licences for Rogers' services were renewed in 2014, the PNI requirements were made consistent with the other English-language ownership groups. Given the relatively short timeframe in which the PNI requirements have been in place, the Commission considers it would be premature to alter the policy at this time. The current requirements relating to PNI including the specific program categories in each linguistic market will therefore be maintained.

In the Notice of Consultation, the CRTC noted the following overall financial and programming expenditure trends observed during the current licence term:

- On an aggregated basis⁵, the total revenues of the large English-language designated broadcast groups have dropped by 2.5% per year on average between the 2011-2012 and 2014-2015 broadcast years. Similarly, the CPE [Canadian programming expenditures] of these groups have dropped by 1.4% per year on average over the same period.
- In total, the large English-language designated groups spent \$3.3 billion in CPE during the period from the 2011-2012 to 2014-2015 broadcast years, 52% of total CPE for all English-language services throughout the period.
- The PNI expenditures of the large English-language designated groups saw an annual decrease of 12.7%, dropping from a cumulative sum of \$158.5 million in the 2011-2012 broadcast year to \$105.4 million in the 2014-2015 broadcast year, which is a decline of \$53.1 million.

² Broadcasting Notice of Consultation CRTC [2016-225](#), 15 June 2016.

³ Broadcasting Regulatory Policy CRTC [2015-86](#), 12 March 2015.

⁴ The Commission defined programs of national interest (PNI) as scripted drama, long-form documentaries, and designated Canadian awards shows.

⁵ CRTC note regarding the data: "The CPE, PNI, and revenue figures were generated using the annual returns filed by the licensees. Figures are based on the current composition of the large English-language designated groups (Bell, Shaw, Corus, and Rogers), as defined in Broadcasting Decisions [2011-444](#), [2011-445](#), [2011-446](#), [2013-737](#), and [2014-399](#). The services that were formerly part of the bilingual designated Astral group, and whose acquisition by Bell was approved in Broadcasting Decision CRTC [2014-62](#), were spread between Bell's English- and French-language groups according to the language in which they are offered."

The Petitioner was an Intervener in the Proceeding before the CRTC to consider renewals of the broadcast licences of the services owned and operated by the major English-language broadcast groups, including Bell and Corus. The Petitioner, along with other Interveners such as The Alliance of Canadian Cinema, Television and Radio Artists; Canadian Media Producers Association; and Directors Guild of Canada submitted uncontroverted evidence to the effect historic contributions from Bell and Corus to PNI averaged on order of 8%.⁶

In determining an appropriate PNI level for a new licence term, the Petitioner urged the Commission to take a longer view. As the Petitioner noted in its written intervention:

The Group Policy was preceded by the 1999 TV Policy⁷, which had removed expenditure requirements on Canadian programming and replaced them with an emphasis on the exhibition of “priority programming” in peak viewing hours. The WGC believes that this resulted in broadcaster emphasis on cheaper Canadian programming that could be scheduled largely in shoulder periods and used to fill hours. This, in turn, meant that spending on Canadian programming was suboptimal while the 1999 TV Policy was in effect. In 2010 the Group Policy was released⁸, which expanded CPE, created the concept of PNI, and then set minimum spending levels for each based upon historical spending by the large, English-language broadcast groups. Importantly, these spending levels were set based on the three years of 2008-2009, 2009-2010 and 2010-2011. These years were from a period in which: 1) spending was already suboptimal, under the 1999 TV Policy; and 2) Canada was amidst a global recession. As a result, the Group Policy set, as its baseline, minimum Canadian programming spending levels that the WGC submits were suboptimal. The Commission expected that spending to increase over time as broadcaster revenues increased. However, that did not occur and spending has therefore not increased, and in fact spending has decreased in at least some cases.⁹

In its intervention, the Petitioner referred to this as a “double whammy”. PNI and CPE requirements were set as a percentage of revenue based on the lower historical expenditures resulting from the 1999 TV Policy, and the Commission in 2011 clearly expected revenue growth to result in, “a greater overall contribution to Canadian programming by each of the groups.”¹⁰ But the Commission did not then anticipate the challenges that would soon face the broadcast groups, particularly with respect to conventional TV. So instead of growth, the system saw declines in both revenue and spending on CPE and PNI.¹¹

The Petitioner believes it would have been justifiable for the Commission to impose higher than historical CPE and PNI expenditure requirements in the Decisions. Given that the Commission in 2010 effectively determined that Canadian programming spending was

⁶ Note 1, *supra*.

⁷ Public Notice CRTC 1999-97.

⁸ Broadcasting Regulatory Policy CRTC [2010-167](#), *A group-based approach to the licensing of private television services*, 22 March 2010.

⁹ WGC Intervention dated August 15, 2016, para. ES3.

¹⁰ Broadcasting Decision CRTC [2011-441](#), 27 July 2011, para. 22.

¹¹ Note 9, *supra*, at para. 26.

too low, and wanted to see it increased, then it would have been reasonable to require higher percentages to achieve that objective. Instead, the Commission determined in its 2010 policy, and reiterated in its 2015 Canadian Programming Policy, that it would maintain existing spending requirements and levels—a decision accepted by the Petitioner.

Rather than maintaining existing historic spending levels on PNI, the 5% PNI levels proposed by Bell and Corus, and, contrary to its earlier determinations, accepted by the Commission in the Decisions, will, if treated as a ceiling, result in a significant reduction in PNI expenditures during the next licence term.

As stated by the Petitioner during the Proceeding, if the 5% PNI level were to have applied for the then broadcast year (2015-2016) for Bell, actual required PNI would have been \$17.5 million less (or 21% lower) than that required under existing PNI levels. Similarly, if the 5% PNI level were to have applied for the 2015-2016 broadcast year for Corus, actual required PNI would have been \$23.2 million less (or 27% lower) than otherwise. The net impact would have been a reduction of \$40.7 million in PNI expenditure, which multiplied over the coming 5-year term,¹² results in a potential loss of over \$200 million over the licence term.¹³

The Commission's Decisions

The Commission's group-based licence renewal decisions for the large English-language designated broadcast groups are comprised of an "Introductory Decision" (Broadcasting Decision CRTC 2017-148) and specific licensing decisions for each of Bell, Corus, and Rogers.

The three licensing decisions set out the Conditions of Licence and expectations for each applicable service for the group in question, and reasons for any specific decisions applicable only to services in that group. The Introductory Decision sets out the analysis and reasoning behind decisions affecting all three English-language designated groups.

As a matter of law, the Introductory Decision is not a "decision" within the meaning of subsection 28(1) of the Act, as it does not itself "issue, amend or renew a licence". The Commission's legal decision to establish a standard 5% PNI level is rather set out in each of the three licensing decisions as follows¹⁴:

- Bell Media Inc. ("Bell") - Decision CRTC 2017-149, Appendix 3, COL #7; Appendix 4, COL #7;

¹² Recognizing that such impacts are based upon 2014-2015 revenues, and that revenues are likely to vary throughout the licence term.

¹³ WGC Reply Submission, dated December 16, 2016, para. 4, per the Boon Dog Report. WGC also notes the CMPA Nordicity PNI Analysis, "*Analysis of Reduced Spending on Independent PNI Production*", June 2017, which comes to similar conclusions.

¹⁴ It is important to note that the PNI requirement is not based on revenues from all channels: mainstream news and sports channels are excluded. Similarly, it does not apply to Rogers' OMNI channels, which are not part of the Rogers "designated group".

- Corus Entertainment Inc. (“Corus”) - Decision CRTC 2017-150, Appendix 2, COL #7; Appendix 3, COL #7; and
- Rogers Media Inc. - Decision CRTC 2017-151, Appendix 3, COL #12; Appendix 4, COL #9.

Read as a whole, however, the Introductory Decision and group-based licensing decisions together set out the rationale behind and implementation of the standard 5% PNI level.

In the Introductory Decision, the Commission noted the views of WGC and other “Members of the creative sector” on the appropriate PNI level as follows:

38. Members of the creative sector, including ACTRA, the CMPA, the Documentary Organization of Canada (DOC), the DGC and the WGC, argued that the Bell/Corus proposals should be rejected because they represented an insufficient investment. The DGC, for example, submitted that these proposals would result in significant losses to the system.
39. The CMPA, the DGC and the WGC noted that the Bell and Corus groups had averaged an 8% PNI expenditure level from the 2011-2012 to 2014-2015 broadcast years. The DGC submitted that existing spending should be maintained and proposed that the PNI expenditure requirement for all three groups be set at 9%, while ACTRA proposed that it be initially set at 8% and increased annually over the next licence term.¹⁵

Having summarized evidence and argument of the parties in the hearing, the Commission set out its analysis and policy decision on PNI as follows:

41. In light of the streamlining of its approach to discretionary services, the Commission considers that establishing a standard 5% PNI expenditure requirement as a floor for all services would allow the groups and their services to compete on an equal footing and give them the flexibility to adapt in a more competitive marketplace, consistent with its determinations in the Let’s Talk TV proceeding and the group-based policy. The Commission is also satisfied that this would represent an appropriate floor to ensure that this type of programming is available within the system. The Commission encourages the groups to exceed the minimum requirement.
42. Accordingly, the Commission is adopting a 5% PNI expenditure requirement for all services within the groups. At least 75% of such PNI expenditures must be allocated to independently produced programming.

The Commission’s reasons for establishing a 5% PNI level are accordingly based on four inappropriate or incorrect premises:

¹⁵ It is important to note again here that the 8% average PNI expenditure level cited by the CRTC in this passage was based on an analysis of the data available at the time of the submission of interventions. As previously noted, the 8% level became 9% for Corus after Corus filed revised PNI spending data in October 2016.

- First, that “streamlining” its approach and establishing a “standard” requirement was a sufficient and appropriate policy rationale;
- Second, that it “would allow the groups and their services to compete on an equal footing”;
- Third, that it would “give them the flexibility to adapt in a more competitive marketplace”; and
- Fourth, that a 5% PNI level would act as an “appropriate floor”.

This approach to establishing a PNI level for the new licence term is a fundamental departure from how the Commission has established PNI requirements in all licensing and other decisions since the establishment of the PNI framework in 2010 until now.¹⁶

In all such previous decisions, the Commission established PNI requirements based on a three-year historic average of the percentage of PNI expenditures relative to total broadcasting revenues.

Notwithstanding its acknowledgement that the three-year historic average PNI spend for Bell and Corus was at least 8% (it is, to be clear, 8% for Bell, 9% for Corus, and on the order of 5% for Rogers¹⁷), and notwithstanding the Commission’s established policy of establishing PNI requirements based on three-year historical averages, the Commission set an arbitrary PNI level that is 38% lower than the historic average for Bell and 44% lower than the historic average for Corus, and based on entirely new, inappropriate rationale.

The Petitioner takes no position in this Petition on the Commission’s Decisions regarding the major French-language ownership groups, as set out in Decisions CRTC 2017-144 through 147. Moreover, and as further discussed below, the Petitioner does not necessarily seek to overturn the Commission’s decision to ascribe a 5% PNI level to Rogers Media Inc. in Broadcasting Decision CRTC 2017-151, in light of Rogers’ designated group make-up and estimated historical contribution levels.

¹⁶ See Introductory Group Licensing Renewal Decision, Broadcasting Decision CRTC [2011-441](#), and specific licence decisions, Bell Media Inc. – Broadcasting Decision CRTC [2011-444](#); Shaw Media Inc. – Broadcasting Decision CRTC [2011-445](#); Corus Entertainment Inc. – Broadcasting Decision CRTC [2011-446](#); Rogers Media Inc. – Broadcasting Decision CRTC [2011-447](#); all July 27, 2011. See also Broadcasting Decision CRTC [2013-737](#), December 20, 2013, acquisition of TELETOON/TÉLÉTOON and TELETOON Retro; and Broadcasting Decision CRTC [2014-62](#), Astral broadcasting undertakings – Change of effective control – Follow-up to the Astral-BCE transaction, February 17, 2014.

¹⁷ Note 1, supra.

I. The Decisions Derogate from Attaining the Objectives of the Act

The Petitioner submits that the Decisions derogate from the attainment of the objectives 3(1), (b), (d), (e), (f), (i) and (s) of the broadcasting policy for Canada.

These sections are set out, for convenience, below:

Broadcasting Policy for Canada

Declaration

3. (1) It is hereby declared as the broadcasting policy for Canada that

...

(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

...

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

(iv) be readily adaptable to scientific and technological change;

e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;

(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

...

(i) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

...

(v) include a significant contribution from the Canadian independent production sector

...

(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

(i) contribute significantly to the creation and presentation of Canadian programming, and

(ii) be responsive to the evolving demands of the public; and

The creation and presentation of Canadian programming has been at the centre of the Canadian broadcasting system—and the centre of the *Broadcasting Act*—from its earliest days. The concept of Canadian programming is expressed at least a dozen times in section 3(1) of the Act, as arguably the primary manner in which its various social and cultural objectives are effected. Indeed, it is virtually impossible to imagine a distinct, meaningful “Canadian broadcasting system” without Canadian programming.

While the Commission has wide latitude and discretion to determine which objectives under Subsection 3(1)(b) of the Act are more or less important in a given situation, that discretion needs to be exercised prudently and with due consideration to the clear priorities established in the Act.

In particular, while pursuant to section 3(1)(d)(v) the Canadian broadcasting system should be readily adaptable to scientific and technological change, mere administrative convenience or conjecture cannot take priority over clearly enunciated objectives such as:

- private networks and programming undertakings should contribute significantly to the creation and presentation of Canadian programming (subsection 3(1)(s)(i));
- the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector (subsection 3(1)(i)(v)); and
- each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming (subsection 3(1)(f)).

This is because being “sensitive to administrative burden” is a *regulatory policy* objective, set out at subsection 5(2)(g) of the Act, and pursuant to subsection 5(3) subsidiary to *broadcasting policy* objectives:

(3) The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

By framing its rationale for a 5% PNI level substantially on the basis of “streamlining”—in other words, administrative concerns—the Commission has *prima facie* breached its obligation to give precedence to matters of support for Canadian programming.

II. The CRTC Erred in Concluding that Any Change in PNI Levels was Warranted in the Circumstances

A back-drop to the Decisions is the evidence of tangible, but not unsustainable, reductions in regulated broadcasting revenues that have been suffered by Canadian television broadcasters, including the groups in question.

As noted by the Commission, the total revenues of the large English-language designated broadcast groups dropped by 2.5% per year on average between the 2011-2012 and 2014-2015 broadcast years.¹⁸ The financial projections for the 2017 to 2022 licence term¹⁹ filed by the broadcast groups themselves varied, with small projected revenue declines from Bell and Rogers, and slight overall increases from Corus.

Notwithstanding these historical and projected revenues, neither Bell nor Corus argued that their revenues or profits would decline over the next licence term in such a way as to cause a PNI level matching historical levels, to become unaffordable, unsustainable, or “impracticable” as that term is used in subsection 3(1)(f) of the Act. Requiring these private programming undertakings to “contribute significantly to the creation and presentation of Canadian programming” on the basis historical PNI spending levels would also have been “consistent with the financial and other resources available”, per subsection 3(s)(i) of the Act.

As noted by the Petitioner during the Proceeding, this is because PNI levels are set as a percentage of revenue. They will automatically increase or decrease in dollar value with increases or decreases of broadcasting revenue. Accordingly, in an environment of declining broadcasting revenue, the percentage mechanism will *automatically* reduce the minimum spending required on Canadian programming. In other words, a reduction in PNI spending for the next licence term is already built into the expenditure formula given current and expected continued revenue declines in the broadcasting system. As such, further decreasing the percentages themselves results in an additional “double whammy”, since both the numerator and the denominator will decline.²⁰

As a 5% PNI level is materially lower than historical spending, it cannot be said to fulfill the Commission’s stated objective of “stable, continued support for the creation of Canadian programming”²¹, or its decision to “maintain” requirements relating to PNI.²²

¹⁸ Broadcasting Notice of Consultation CRTC [2016-225](#), 15 June 2016. It is also worth noting, however, that Statistics Canada figures released on June 20, 2017 indicate that total operating revenues for the Canadian television broadcasting sector rose 0.9% from 2015 to \$7.5 billion in 2016. <http://www.statcan.gc.ca/daily-quotidien/170620/dq170620e-eng.htm>.

¹⁹ To be clear, 2017 represents the final year of the current licence term. The CRTC required the broadcast groups to file revenue projections for only the first four years (up to 2021) of the next 5-year licence term (which will end in 2022).

²⁰ Note 9, *supra*, at para. 53.

²¹ As stated in Broadcasting Regulatory Policy CRTC [2010-167](#), 22 March 2010.

²² As stated in Broadcasting Regulatory Policy CRTC [2015-86](#), 12 March 2015.

In justifying a deviation from prior established CRTC policy, echoed in the broadcasting policy objectives of the Act, the onus on the Commission should of necessity be high. In particular, a decision to reduce relative support for PNI (by adopting a standard PNI level of 5% of revenues), on top of the recognition that revenue itself is likely to decline, cannot be made by the Commission absent compelling reasons. No such compelling reasons were provided by Bell and Corus in requesting a 5% PNI level, nor were they provided by the Commission in its reasons for the Decisions.

III. The CRTC Erred in Opting for Standard PNI Expenditure Levels Rather than Maximizing Spending to PNI

In the first group licence renewal proceeding in 2010/11, the broadcast groups (with the exception of Rogers) argued that the same CPE and PNI levels should apply to each of the broadcast groups. The Commission, however, imposed requirements on each group on the basis of historical spending, which meant that each group ended up with different CPE requirements for their conventional TV stations and some groups were given different group PNI levels. Specifically, following the group-based policy, the Commission established PNI expenditure requirements of 16% of revenues for Astral, 5% for Bell and Shaw, 9% for Corus, and 5% for Rogers.²³

In broadcast acquisitions and transfers since 2010, and before the Decisions, the Commission consistently applied this historical benchmark approach. For example, in the 2013 acquisition of Teletoon by Corus, the Commission determined:

Corus proposed to devote 26% and 4% of the revenues of TELETOON/TÉLÉTOON and TELETOON Retro respectively to PNI expenditures. This level is consistent with the Commission's practice, which is based on a service's historical expenditures during the last three broadcast years. The Commission has therefore imposed these requirements on the services by **condition of licence**. As a consequence, the Corus designated group's PNI requirement has effectively increased from 9% to 12%.²⁴

In this licence renewal Proceeding, the broadcast groups (this time including Rogers) again argued that the same CPE and PNI levels should apply to all of the broadcast groups. Moreover, all broadcast groups proposed a minimum spending level of 5% of gross group revenue from the previous year for PNI—for Bell and Corus, representing well below historic three-year average PNI levels. This time—six years later—the Commission agreed.

Nothing in the Act requires “standardized” contributions. Indeed, given that the Commission rejected requests for “standardized” contributions in 2011, the only possible justification is some change in environment in the last six years that justifies a new approach.

²³ Broadcasting Decision CRTC [2017-148](#): Renewal of licences for the television services of large English-language ownership groups – Introductory decision, 15 May 2017, para 33.

²⁴ Broadcasting Decision CRTC [2013-737](#), 20 December 2013, para 103.

Such a justification cannot, however, be a mere matter of administrative convenience or conjecture about the future broadcasting environment. By justifying its Decisions to establish “a standard 5% PNI expenditure requirement” on “[i]n light of the streamlining of its approach to discretionary services”, the Commission has clearly done the former. (The latter will be discussed further below.)

The Commission has given no reason why administrative burden should be a greater concern in 2017 than it was in 2011.²⁵ In fact, given that the cycle of consolidation activity that has dominated broadcasting over the last decade and more has largely come to an end, issues of administrative burden will, if anything, be diminished going forward.²⁶

In any event, as discussed above, the framework of the Act gives unequivocal priority to broadcasting policy objectives, such as those related to Canadian programming and independent production, over regulatory policy objectives, such as administrative burden or convenience.

The CRTC is therefore statutorily prohibited from establishing a 5% standard PNI level on the basis of “streamlining” or any other administrative rationale.

IV. The CRTC Erred in Deeming a 5% PNI Level for All English-Language Broadcast Groups Necessary to Allow the Groups to “compete on an equal footing” and “give them the flexibility to adapt in a more competitive marketplace”

Although subsidiary to its comments on “streamlining”, the Commission’s attempts to justify its standard 5% PNI level were also based on the following two other rationale:

- that it “would allow the groups and their services to compete on an equal footing”; and
- that it would “give them the flexibility to adapt in a more competitive marketplace”.

²⁵ The Commission hints at the challenges in resetting CPE and PNI levels in acquisition scenarios. This is a false concern, both because the Commission has met these challenges in the past, and because the Commission has the option of including acquired services in the “designated group” or not. (See, for example, the Corus-Teletoon, Bell-Astral, and Corus-Shaw transactions: Broadcasting Decision CRTC [2013-737](#), Broadcasting Decision CRTC [2014-62](#), and Broadcasting Decision CRTC [2016-110](#)). In any event, the Commission is obliged, as a matter of longstanding policy, to ensure unequivocal “net benefits” in transactions involving a change in effective control. Such a test cannot be met without at least examining proposed PNI and other contributions.

²⁶ With three major broadcast groups remaining, down from five (that is, including CHUM and Astral) just over a decade ago, further consolidation would likely come up against ownership limits set out in the CRTC Diversity of Voices Policy, under which the Commission will generally not approve transactions that will result in any one ownership group controlling more than 45% of the total television audience share, and require careful examination of a transaction resulting in more than 35% share. The Commission will also not generally approve the ownership of more than one TV station in a given market. Broadcasting Public Notice CRTC 2008-4.

Such rationale echoed submissions from Bell and Corus to the effect that the new regulatory framework, combined with increased competition from unlicensed services, requires regulatory parity, and makes historical analysis irrelevant.²⁷

Central to Bell and Corus' submissions, and, it appears,²⁸ the Commission's Decisions, is the elimination of genre exclusivity, per the Let's Talk TV Decisions in 2015.²⁹ This is the most material regulatory change affecting the competitive balance between broadcast groups since the Commission refused to impose standard PNI commitments in 2011, and therefore the only potentially legitimate reason for imposing standard PNI commitments in 2017.

Elimination of Genre Exclusivity is No reason to Lower PNI Levels

With the elimination of genre exclusivity, each of the broadcast groups are *in theory* equally able to compete with each other in every genre of programming. Rogers can launch Pay TV channels to compete with Bell's Pay TV channels. Corus can launch sports services, or morph existing channels into sports, to compete with Rogers and Bell. Bell can launch or morph to more women-focussed channels to compete with Corus. And so on.

An equivalent *reducto ad absurdum* argument is that Canadians can today abandon the Canadian broadcasting system altogether in favour of Netflix, Amazon Prime, and/or YouTube. Nothing prevents this. And yet we do not regulate the system—or more precisely, abandon all regulation of the system—just because that theoretical possibility exists.

The point being: What is theoretically possible, what is mere conjecture, is no basis for departing from longstanding CRTC policy and practice in support of PNI, and related broadcasting policy objectives.

Interestingly, while arguing the opposite, the actual evidence of Bell and Corus supports this view. Both Bell and Corus argued in the Proceeding that as historical spending was rooted in genre exclusivity, with the elimination of that policy, history should have no role in a new licence term. Yet at the same time, when asked about genres that they historically haven't been involved in—such as children's programming for Bell, or serial drama or sports for Corus—the groups spoke about their “asset mix” and their “brands”.³⁰ Yet what is an “asset mix” other than a group of services and brands that have acquired a certain identity over time?

²⁷ Application of Bell Media Inc., *Application for Renewal, 18 April 2016, Appendix C*; and Application of Corus Entertainment Inc., *Group Issues – CPE and PNI*.

²⁸ At paragraph 21 of the Introductory Decision, the Commission states “In light of the regulatory changes announced in Broadcasting Regulatory Policy CRTC [2015-86](#), such as the elimination of the genre exclusivity policy and related protections for discretionary services, leading to a more competitive environment, many interveners raised the need for standardized CPE requirements.” This is not necessarily indicative of the Commission holding the view that the elimination of genre exclusivity warranted standardized PNI levels, but in the broader context is suggestive of it.

²⁹ Broadcasting Regulatory Policy CRTC [2015-86](#), 12 March 2015.

³⁰ See, for example, Corus at [Transcript, November 28, 2016](#), paras. 929-934, 944-946.

Furthermore, two years out from the elimination of genre exclusivity, other than a few minor examples—mainly in the food/cooking genre—the Canadian television system has seen no major restructuring of asset mixes. Corus is still focused on women and children, Bell still has a robust drama portfolio, and Rogers still has a sports focus along with its City channels.³¹

That's history, and it significantly affects the nature of Bell's and Corus' businesses and ability to support PNI today, and will over the next licence term.

Competitive Parity Would be Better Served by PNI Set at Historical Spending Levels

The notion that a standard 5% PNI level is necessary for competitive market reasons also fails when one looks at the competitive market as between Rogers on the one hand and Bell and Corus on the other.

Bell and Corus have similar total regulated broadcasting revenues, and similar conventional TV reach. Rogers, on the other hand, has far lower overall revenues, a conventional TV group that reaches fewer Canadians than each of Bell and Corus, and a much smaller base of discretionary TV services.³² The three English-language broadcast groups have vastly different asset mixes, revenue profiles and expertise, emphasize different genres of programming, and look to the future with different strategies.³³

While a standard 5% PNI level clearly helps Bell and Corus compete with Rogers, it can only hurt Rogers' ability to compete with Bell and Corus.

There is arguably, therefore, a stronger “competitive parity” argument for a 5% PNI level for Rogers combined with an 8% or 9% level for Bell and Corus, than a 5% level for all three.

To be clear, the Petitioner does not oppose the Commission's desire to provide the groups with increased “flexibility to adapt in a more competitive marketplace”. But the notion that a 5% standard PNI level is necessary, or would even help to achieve this, is simply not borne out by the evidence.

The Let's Talk TV Decisions Were Premised on Increasing, Not Decreasing, Emphasis on Expenditure Requirements

A second material historical touch point is that the whole scheme of, and philosophy behind, the Let's Talk TV Decisions was a reduction in reliance on unnecessary, burdensome, and “less effective” regulatory measures—including genre protection, tests

³¹ The most significant recent change is Corus abandoning the Pay TV sector, leaving it almost entirely to Bell. Rather than increased competition among genres, there is, if anything, less. <http://www.cbc.ca/news/business/bell-buys-hbo-rights-across-canada-as-corus-backs-out-of-pay-tv-1.3328375>

³² Corus and Bell are both in the \$1.2 to \$1.3-billion range in terms of TV revenues; Rogers is less than \$300 million.

³³ All three broadcast groups acknowledged this. See, for example, [Transcript, December 1, 2016](#), paras. 6711-6713 (Rogers); [November 29, 2016](#), paras. 2390-2392 (Bell); and [November 28, 2016](#), paras. 927-929 and 1370 (Corus).

for predominance of distribution of Canadian services, and exhibition quotas—in return for a greater relative reliance on CPE requirements:

In light of the various other changes that the Commission is making in the Let's Talk TV proceeding, the Commission is not proposing to raise CPE levels. Maintaining the status quo will give the Commission the opportunity to monitor the impact on revenues of the other changes originating from this proceeding and will allow affected parties to adapt accordingly.³⁴

The Decisions put a lie to that scheme. It is a classic bait and switch. Reduce or remove important regulatory measures in favour of expenditure requirements, and then lower those expenditure requirements in the area that matters most, and will most suffer as a result—PNI.

Lowering PNI requirements is not about flexibility. Nothing could be more flexible than a percentage-based requirement. It is not about competitive parity. Competitive parity can be achieved without lowering PNI.

It is, plain and simple, an inexplicable reversal of the Commission's promised *quid pro pro* to maintain PNI levels in light of fundamental deregulation elsewhere.

V. “Trust me” is Not the Answer

The Introductory Decision makes much of the fact that an imposed minimum 5% PNI requirement is “a floor”.

The Commission even states, somewhat imploringly, that it “encourages the groups to exceed the minimum requirement.”³⁵

The Petitioner accepts that minimum requirements can be exceeded, and indeed, to their credit, the English-language broadcast groups did, in most broadcast years during the current licence term do so.³⁶ The notion that this would be a reasonable assumption to any material extent going forward is, however, at best, entirely speculative.

This assumption ignores the fact that it remains cheaper for the broadcast groups to license U.S. programming or non-PNI Canadian programming than to commission new, original Canadian PNI.

Also, it is reasonable to assume, perhaps even expect, that Bell and Corus would not have sought a lower PNI expenditure level compared to historical spending had they no intention of reducing spending over the next licence term to the new lower 5% floor.

³⁴ Broadcasting Regulatory Policy CRTC [2015-86](#), 12 March 2015, para 219.

³⁵ Note 23 (Introductory Decision), *supra*, para 41.

³⁶ An analysis by Boon Dog reveals some PNI overages for existing broadcast groups in each of the first four years of the current licence term (with the exception of Rogers where only one year of data are available). Given the groups' flexibility to average out under and over-spending, and actual PNI spending reductions in 2015-16 and market indications of PNI spending declines in 2016-17, significant overages are not anticipated for the full licence term.

As already noted, and stated by the Commission in the Notice of Consultation, PNI expenditures of the large English-language broadcast groups saw an annual decrease of 12.7%, dropping from a cumulative sum of \$158.5 million in the 2011-2012 broadcast year to \$105.4 million in the 2014-2015 broadcast year, which is a decline of \$53.1 million.

Spending in 2015-2016 was down \$67 million or 28% from 2007-2008 for Bell, Shaw, and Corus alone.³⁷

Accordingly, the Petitioner believes that limited credence should be given to the notion that a 5% PNI level is likely to be exceeded in any material way by the groups. In any event, to the extent that the groups might exceed the PNI spending “floor” of 5%, any increase in the required PNI spending level would have less downside to them.

VI. The CRTC Failed to Provide an Appropriate Rationale for Reducing Required Expenditures on PNI

Given that, as the Petitioner has demonstrated, a standard level of PNI for all three English-language broadcast groups is not a sufficient rationale for reducing PNI requirements, the Commission’s Decisions to impose a minimum 5% PNI requirement on Bell and Corus must, of necessity, be found to derogate from the broadcasting policy objectives of the Act.

Those policy objectives must be read both in terms of their plain meaning, and how they have been interpreted since at least the 1991 Act came into force. In particular, they must recognize that the importance of maximizing PNI, and its precursor equivalents, has long been recognized.

The creation of Canadian programming has been the key challenge of the English-language broadcasting system since its inception, faced as it is with the multiple challenges of being produced for a small market while being linguistically and geographically proximate to the largest media production centre on the planet.³⁸ Within the broad range of Canadian programming, PNI, and its precursor equivalents, has for at least three decades been a particular challenge and central policy focus.

Drama or fiction programming, historically the largest category of programming in PNI, is the most expensive type of programming³⁹, and therefore, the hardest to produce.⁴⁰ But it is also the most popular type of programming among audiences. As a result, while drama

³⁷ Analysis of long-term spending on PNI prepared by Boon Dog Professional Services Inc. for WGC based on publicly available data. A lack of such publicly available data for Rogers precludes its inclusion.

³⁸ The WGC went into further detail on these challenges in our written submission to Broadcasting Notice of Consultation CRTC [2014-190](#), *Let’s Talk TV*, June 27, 2014, at paras. 1-32.

³⁹ Average Canadian fiction budgets in 2015/16 were \$1.43 million per hour. By contrast, documentary was \$350,000, and lifestyle and human interest, \$380,000. News and information programming produced by broadcasters is typically lower still. CMPA Profile 2016, Exhibit 4-8.

⁴⁰ A truism not only for Canada, but virtually any nation other than the U.S.

represents 40% of all TV viewing in both English and French Canada, only 20% of that viewing is to Canadian drama in English Canada (30% in French Canada).⁴¹

Reference has been made by the Petitioner to the failure of the 1999 TV Policy. The intent of that policy, however, had been otherwise.⁴² That intent had been to advance then so-called “priority programming” (very similar to PNI) through an exhibition (eight hours a week) rather than expenditure approach.

Preceding the 1999 TV Policy, and through the 1980s and 1990s, was an increasing regulatory emphasis on “under-represented” genres of programming, particularly drama series, documentaries, and children’s programs (a slightly narrower definition than PNI), through targeted licensee-specific expenditure requirements.⁴³

Also prior to 1999, in 1993, the Commission decided to adopt direct cable TV funding of under-represented Canadian programming, resulting in the creation of the Cable Production Fund (“CPF”) in 1995.⁴⁴ This was the direct precursor of the Canadian Television Fund (“CTF”), now Canada Media Fund (“CMF”), today funded by mandatory CRTC-imposed BDU contributions of 5% of revenues, of which 3.2% typically goes to the CMF.⁴⁵

In 1996, the government itself moved to more directly foster drama, documentary, and other PNI categories through the amalgamation of the CRTC-approved CPF into a public-private partnership, then called the Canada Television and Cable Production Fund (CTCPF), with a government contribution on the order of \$250 million per year over three years.⁴⁶ Government contributions to the CMF have been consistently renewed, and currently stand at \$134.1 million per year.⁴⁷

In addition, it was specifically in the 1991 Act that the need for a “significant contribution from the Canadian independent production sector” was recognized as a broadcasting policy objective. Support for PNI and support for independent production are directly

⁴¹ CRTC Communications Monitoring Report 2016, Table 4.2.10. Viewing to Canadian TV services. All other genres of Canadian programming receive a greater share of viewing to Canadian within that genre; e.g. news at 99.9%, documentary at 48%, and sports at 67%.

⁴² A consistent theme of Public Notice CRTC 1999-97 was “building on success”. The Commission expanded its earlier designation of under-represented programs to include Canadian regionally produced programs in all categories other than News and information (Categories 1, 2, and 3) and Sports (Category 6) and Canadian entertainment magazine programs, referring to this broader categorization of programs as priority programs, and established a new requirement of eight hours of priority programs in peak time (7 to 11 pm) per week. Recognizing that “the economics of the Canadian marketplace are such that it remains very expensive to create and exhibit Canadian drama”, the Commission also created new incentives for broadcasters to acquire and air such programs.

⁴³ See local TV renewal decisions and expenditure requirements for Canadian Entertainment Programming, defined as drama, music and variety (categories 7, 8 and 9) in 1989 and 1995, per Public Notice CRTC 1995-48. In 1995 the Commission gave the option of exhibition or expenditure requirements.

⁴⁴ The original funding mechanism was through changes to the capital expenditure “sunset” provision contained in cable TV regulations. (Public Notice CRTC 1993-74) Pursuant to Public Notice CRTC [1994-10](#), the Cable Production Fund started receiving money from cable distributors in January 1995, supporting 186 new projects by August 1996, representing a total CPF contribution of \$34.8 million.

⁴⁵ Pursuant to new BDU regulations being established. The level is typically 4.2% for DTH. Broadcasting Notice of Consultation CRTC [2017-50](#), 24 February 2017.

⁴⁶ Public Notice CRTC 1997-27. The CTCPF became the CTF in 1998, and then the CMF in 2001.

⁴⁷ CMF 2015-2016 Annual Report.

related. Fiction programming is almost exclusively produced by independent producers, and the Commission requires that 75% of PNI expenditures go to independent producers.

Deviation from such longstanding goals of maximizing support for PNI, and reversing decades of policies and regulations designed to increase support for PNI, must be based on something more than concerns over potential future challenges or administrative burden.

Quite simply, in establishing a 5% PNI level for Bell and Corus, the Commission has failed to provide sufficient and adequate reason to depart from longstanding policy and practice, and therefore the Decisions must be found to derogate from the broadcasting policy objectives of the Act.

VII. The Decisions are Deeply Flawed and Will Cause Undue Harm to Canada’s Domestic Independent Production and Particularly its Screenwriters

The Petitioner represents more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. It is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.

While the state of production in Canada is relatively healthy, distinctions need to be drawn among genres of production and as between distinctly Canadian, industrial Canadian, and foreign or service production. In particular, while film and television production in Canada reached an all-time high of \$6.95 billion in 2014/15 from \$5 billion in 2006/07, the majority of that increase was from foreign location and service production, which grew 81.4% to \$2.6 billion. Canadian independent television production grew a more modest 16.5% to \$2.5 billion, over the same period. Moreover at \$1.4 billion in 2015/16, Canadian film and TV fiction production is lower than the peak of \$1.5 billion achieved in 2011/12, and, it appears, on a path to go lower.⁴⁸ The latter is consistent with trends regarding declining spending on PNI by the broadcast groups, as cited by the CRTC in its Notice of Consultation in the Proceeding (and referenced earlier in this Petition).

WGC recognizes that service production, that is non-CanCon production, plays a role in the production ecosystem for many players.⁴⁹ It does not, however, benefit professional Canadian screenwriters.⁵⁰ Nor is it a genuine alternative to *bona fide* Canadian scripted television production—created and written by Canadian screenwriters, about stories that matter to us, and using Canadian talent.

⁴⁸ CMPA Profile 2016, Exhibits 4 and 3-2. The Canadian film and TV fiction volume numbers combine television and theatrical feature film, both of which qualify as PNI when aired on television.

⁴⁹ It is also worth noting that service production in Canada is supported by generous tax credits, a low Canadian dollar relative to the value of the U.S. dollar, and studio space and other infrastructure that has been well-supported by Canadian taxpayers, particularly at the municipal level.

⁵⁰ Service productions generate economic activity, employ Canadian crews and even some secondary or tertiary actors. They do not, however, employ professional Canadian screenwriters living in Canada, nor (typically) Canadian directors or lead actors.

It is distinctly Canadian, 10 out of 10 point, PNI production that is the hardest type of production to finance and the most at risk as a result of the Decisions. It is this genuine Canadian storytelling, and the writers who are the true “creators” behind it, that we risk losing.

Funding for PNI already faces increasing challenges:

- Significant tangible benefits packages, resulting from over a decade of broadcaster consolidation, are drying up; from nearly \$40 million in spending on incremental English-language PNI in 2015-2016, to an expected zero dollars by the end of 2021.⁵¹
- The CMF has announced a 5.8% program budget decrease for 2017-18 due to reductions in contributions from BDUs.⁵²

It is important to note that professional Canadian screenwriters work almost exclusively on scripted PNI; they are not required for, and do not work on, other types of Canadian programming.

As such, not only would a potential \$200-million loss in broadcaster PNI expenditures over 5 years have a significant multiplier effect in terms of losses in overall PNI production volume⁵³, it would hit Canadian screenwriters especially hard. It would result in the permanent loss of many Canadian screenwriters, who have already made it clear that the Decisions are the “last straw”, and that relocation to L.A. is almost their only career recourse. When Canadian screenwriters leave Canada, they take their cultural voice with them—and most don’t come back.

Among its current professional membership of 2,200 English-language screenwriters, WGC notes that about 450 are already resident in the U.S., and we fear that more will undoubtedly follow as a result of the Decisions.⁵⁴ This is not just a question of a few jobs going south. These are the very Canadian cultural voices that the *Broadcasting Act* seeks to have represented in the Canadian broadcasting system.

Simply put, having a strong pool of professional screenwriters has been Canadian public policy for decades and has benefited the Canadian economy and Canadian storytelling. The Decisions threaten to tear down much of what has been built over the years in terms of building a strong and distinct Canadian broadcast system.

⁵¹ Special analysis done by Boon Dog Professional Services Inc. for WGC based on data from Boon Dog’s *Canadian Television Benefits Monitor*.

⁵² CMF news release: CMF Announces 2017-2018 program budget, guidelines and deadlines, March 31, 2017. <http://cmf-fmc.ca/en-ca/news-events/news/march-2017/cmf-announces-2017-2018-program-budget.-guidelines>

⁵³ Multiplier effects on broadcaster licence fees can be as high as four or five times, in terms of the actual budget triggered. See, for example, CMPA Nordicity PNI Analysis, “*Analysis of Reduced Spending on Independent PNI Production*”, June 2017.

⁵⁴ About half of WGC’s members report actively exploring requirements to relocate to the U.S. and work there. While WGC celebrates the success of its members in L.A., it goes without saying that Canadian screenwriters based in the U.S. cannot contribute to the Canadian economy or Canadian life in the same way resident Canadian screenwriters do.

More than anything else that has happened in the last fifteen years, these Decisions virtually *tell* professional Canadian screenwriters to find another profession or move to L.A. This legacy of the Blais CRTC will become the legacy of the Trudeau Government if they are not reversed.

VIII. The Governor in Council Could Choose to Send PNI Related Decisions Back on a Number of Grounds

The Petitioner is not alone in having serious concerns about the Commission's decisions on PNI requirements in the Decisions, Introductory Decision, and more generally. Other Members of the creative sector in both English and French Canada have also raised concerns about the Commission's group licence renewal decisions regarding PNI as well as other matters.

While the Petitioner has raised particular concerns and made specific arguments in this Petition appropriate to its members' role as the major creative force behind PNI, the Petitioner shares common cause with other members of the creative sector in the overriding view that maximizing support for Canadian programming must, more than ever, be the #1 broadcasting policy priority—and that maintaining historical spending through percentage of revenue requirements is the most reasonable way to do so.

PNI, particularly drama, in all its former iterations has remained a key targeted priority, within that general support for Canadian programming, for over thirty years. Maintaining support for PNI, at least at historic percentage levels, must be seen as a minimum obligation of the major broadcast groups, and a minimum expectation for the Canadian broadcasting system as a whole.

We have proposed a particular way of achieving that objective, based on our reading of the Act, the record of the Proceeding, and our sense of what would be fair and reasonable in the circumstances.

Our recommendations are constrained somewhat by the lack or inconsistency of data available on the public record during the public process leading up to the Decisions. Requests of the CRTC by interveners such as WGC for missing data were addressed only partially or ignored. This hampered the ability of interveners from the creative sector, and particularly the WGC, from participating fully and meaningfully in the Proceeding. In respect of historical PNI levels, for example, while we estimate Rogers' levels (for the collection of services that will be part of the new Rogers designated group for the next licence term) to have been approximately 5% for the 2012 to 2015 period, insufficient data were made available by the CRTC to substantiate this.⁵⁵

We accept, therefore, that there are other means of ensuring PNI remains at, at least, historic percentage levels, including establishing a common percentage PNI requirement for all English-language groups. While this is not our request, we note that the Governor

⁵⁵ As noted in the Boon Dog Report, Rogers did not file historical PNI spending data for the discretionary services FX and FXX (nor is it available publicly elsewhere), which will be part of the new Rogers designated group in the next licence term. In the absence of such data it was not possible for interveners to assess whether a 5% PNI level, as proposed by Rogers and accepted by the CRTC, is consistent with historical spending for the new Rogers group.

in Council has the power pursuant to subsection 28(1) the Act to refer back CRTC decisions on its own motion and could choose to do so here, if it felt such other approaches should be considered by the Commission on reconsideration.

The Petitioner's Recommendations

Given the potential implications for the Canadian broadcasting system, and for all of the reasons provided herein, the Petitioner respectfully requests that the Governor in Council:

1. Find the PNI requirements established in the Decisions to be not in conformity with the *Broadcasting Act*, and
2. Make an order referring the Decisions back to the Commission for reconsideration and hearing with the following instructions:
 - (a) That the Commission reconsider the 5% minimum PNI requirement established for Bell and Corus, and establish new percentage minima PNI that would be more appropriate and consistent with the historic spending levels of Bell and Corus and the objectives of broadcasting policy;
 - (b) That the Commission give greater weight to longstanding policy and regulation in support of maximizing PNI, rather than administrative or speculative concerns; and
 - (c) That, as transitional measures, the Commission (i) maintain the PNI level of 5% until the Decisions have been reconsidered and (ii) determine an appropriate and fair means, including timing, by which PNI requirements for Bell and Corus can be reestablished at historical levels.

All of which is respectfully submitted this 27th day of June, 2017.

The Writers Guild of Canada