



January 23, 2018

Filed Electronically

Mr. Chris Seidl
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Seidl:

Re: Broadcasting Notice of Consultation CRTC 2017-429 – Reconsideration of the decisions relating to the licence renewals for the television services of large English-language private ownership groups

The Writers Guild of Canada (WGC) is the national association representing approximately 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.

Given the WGC's nature and membership, our comments are limited to the referral back to the Commission for reconsideration and hearing the decisions, contained in Broadcasting Decisions CRTC 2017-148 to 2017-151 of May 15, 2017, to renew the broadcasting licences for the television services of large **English-language** ownership groups.

Executive Summary

ES.1 At its core, this proceeding is about the continuing attempt by Bell Media Inc. (Bell) and Corus Entertainment Inc. (Corus) to drastically reduce—or seek the “flexibility” to drastically reduce—their level of investment in Canadian programs of national interest (PNI) to well below their historical spending on this type of programming. This massive reduction undergirds an apparent strategy to “compete” with foreign “over-the-top” (OTT) services like Netflix by largely abandoning Canadian programming in PNI genres, in favour of some other, undisclosed programming strategy, but one which clearly does not place Canadian drama, children’s programming, or documentary at the fore. The WGC submits that such a strategy may be in the perceived best interests, short term or otherwise, of these broadcasters, but it is not consistent with the objectives of the *Broadcasting Act* (the Act) and therefore cannot be endorsed by the Commission.

- ES.2 The WGC submits that the Commission must place the current proceeding in its historical context. In 2010, the Commission examined the television policy that had been in place since 1999 and concluded that it had not worked effectively to generate a sufficient level of investment in Canadian programming by private, English-language broadcasters. Simply put, broadcasters were significantly underinvesting in Canadian content. As such, the Commission developed the Group Based Policy, which was intended to *grow* such investments from these sub-optimal levels. The mechanism chosen to do this—expenditure requirements set as a percentage of broadcasting revenues—was premised on the growth of those revenues, and it was ultimately ineffective, unfortunately, due to stagnation and/or decline of revenues. The intention, however, to *increase* broadcaster investment from these historical levels, was clear. Today, even as the denominator of the PNI equation (revenues) is under threat, Bell and Corus continue to seek to reduce the numerator (the percentage) itself—a “double whammy” for PNI spending that would see these requirements plummet in real dollar terms. A percentage-based spending requirement like that for PNI already accounts for revenue decreases by its very nature. Yet broadcasters still seek to lower the percentage itself. This was their proposal to the Commission in 2016, and this is their proposal now. The 6% PNI level now advocated by both Bell and Corus is still significantly below their historical PNI spending of 8% and 9% respectively. This is the antithesis of the spirit and intent of the group-based policy, it is contrary to the logic of the Let’s Talk TV proceeding, and it is a repudiation of this reconsideration proceeding and of the federal Cabinet order that precipitated it. The WGC submits that it is therefore still unacceptable.
- ES.3 Bell and Corus have looked to their future in Canadian programming in the PNI genres, and they seem to see little role for themselves there. It seems reasonable to conclude, therefore, that their strategy for competing with the compelling, high-quality drama, children’s, and documentary programming on OTT services like Netflix and Amazon Prime is simply not to compete. If this is true, then we submit that the Commission cannot facilitate that approach given the Broadcasting Policy for Canada set out in the Act. These broadcasters have benefitted, and continue to benefit, from a variety of regulatory protections and flexibility, including those provided in their most recent licence renewal decision. Their most fundamental remaining obligation is to invest a fraction of their revenues in Canadian programming, including PNI. The WGC submits that they must do so, at the very least, at the historical levels of the recent past, and frankly should be required to do so at a higher level, as a percentage of revenues, given the challenges to those revenues, the need to maintain meaningful dollar-value investment, the intent of Broadcasting Regulatory Policy CRTC 2010-167 (the Group Policy), and the objectives of the Act.
- ES.4 The WGC submits that: a) the Order in Council P.C. 2017-1060, dated, 14 August 2017 (the OIC) directs the Commission to “take into consideration that creators of Canadian programming are key to the Canadian broadcasting system and that...Canadian programming and a dynamic creative sector are vital to the system’s competitiveness and contribute to Canada’s economy”; b) the clear spirit and intent of the “Creative Canada” vision statement of September 28, 2017, by the Hon. Mélanie Joly, Minister of Canadian Heritage, is also to support Canadian creative talent; c) the intent of the Group Policy, as described above, was to *grow* investment in PNI; and, d) a mechanism based on revenue growth can no longer be relied upon to increase PNI investment. As such, we submit that the Commission must therefore *increase* the PNI percentages to attain the desired objectives. The WGC proposes an increase of 1% above each group’s historical spending, for a PNI for Bell of 9%, Corus of 10%, and Rogers Media Inc. (Rogers) of 6%. As is

currently the case, these percentages are based on broadcasting revenues, so they can and do automatically adjust to the size of each group, as well as to fluctuations in their revenues, up or down.

- ES.5 The WGC believes that it continues to be appropriate for each of the Bell, Corus, and Rogers designated groups to be held to PNI minimum obligations that are at or above their own historical PNI spending as a percentage of revenue. This means different PNI percentage requirements for each group, rather than “standardized” percentages. However, if the Commission determines that standardization of PNI percentages is necessary then we submit it clearly cannot take the “lowest common denominator” approach to standardization that it did in the 2017 English Renewal Decisions, for several reasons, not the least of which is that this is the very decision that the Governor in Council has referred back to the Commission via the OiC. The Act gives unequivocal priority to broadcasting policy objectives, such as those related to Canadian programming, over regulatory policy objectives, such as administrative burden or convenience. The Commission is therefore statutorily prohibited from establishing a 5% standard PNI level on the basis of “streamlining” or any other administrative rationale. We also submit that standardization is not necessary for reasons of “competitive parity”, given the natures of the Bell, Corus, and Rogers groups.
- ES.6 The WGC does not agree with the “anti-historical” arguments for lower PNI levels, put forward by Bell and Corus. Bell and Corus are themselves inconsistent in their treatment of historical spending on Canadian programming. Their arguments imply that Canadian programming is a competitive liability, rather than a competitive differentiator, and suggests that the developments in the sector over the past 12-18 months were not predicted or predictable in 2016, all of which the WGC rejects. Canadian television, while facing challenges, remains healthy and relevant. Bell’s and Corus’s comments about competitive challenges contradict the statements they made just over a year ago, when they insisted that a 5% PNI requirement would only be a “floor” which they would very likely surpass. These arguments have now largely disappeared, and their own projections show broadcasters spending at—or even under—the PNI “floor” they now propose.
- ES.7 The WGC disagrees with broadcaster arguments that seek to pit PNI against other types of Canadian programming, such as local news. We reject the mindset which suggests that Canadian programming spending is necessarily a fixed pie in which spending on one type of programming must come at the cost of another. We also submit that the numbers don’t support the broadcasters’ contention. All three groups have other options on what type of programming to cut—if they *choose* to cut—in the face of increased PNI spending, *other* than to “sacrifice” local news. Indeed, it was this very flexibility that was central to the group-based approach, and which was granted to them in exchange for a focus on robust Canadian programming expenditure (CPE) and PNI requirements—requirements that they now are trying to reduce. Further, the Commission has already examined the challenges facing local news in Canada, and created new regulatory tools to address them in Broadcasting Regulatory Policy CRTC 2016-224: *Policy framework for local and community television*.
- ES.8 The WGC rejects the argument that broadcasters themselves are “creators,” within the meaning of the OiC or otherwise. Creators are the individual artists who actually do the creative work in bringing a work of art into existence, such as the screenwriters and showrunners that

fundamentally create television programming. Broadcasters' investment in programming, while incredibly important, does not transform them from being an investor or commissioner of programming into being a creator themselves.

- ES.9 The OiC limits the scope of the Commission's reconsideration in this proceeding to the matters expressly stated therein. While Bell, Corus, and Rogers state that they also agree that the OiC expressly limits the scope of this reconsideration, they nevertheless propose a number of changes that clearly extend well beyond the parameters set out in the OiC, such as lower CPE requirements, lower independent production requirements, and a shorter, 3-year licence term. We submit that these proposals are beyond the terms of the OiC and outside the scope of this proceeding, and as such should not be entertained by the Commission at this time.
- ES.10 With respect to the proposal to lower CPE requirements below 30%, the WGC further submits that broadcaster contentions that a 30% CPE was "in exchange" for a lower, 5% PNI are unfounded. On the contrary, there is plenty of evidence that the Commission *always* intended for a 30% minimum CPE to apply to the designated broadcast groups, even if the implementation of that intention in 2011 was not completely effective. As such, the two issues are not directly linked and an increase in PNI pursuant to this reconsideration proceeding in no way necessitates a CPE decrease.
- ES.11 The WGC opposes reducing the licence term of these broadcast licences to three years. Given the time required to launch and complete this reconsideration proceeding, broadcasters will have had the advantage of one year of a PNI requirement of 5%. Granting a three-year licence term in this proceeding will effectively ensure that the broadcasters only have two years of PNI obligations above 5% (and CPE obligations at 30%) before getting the opportunity to "relitigate" this issue all over again in just over one year from now. It was only a year ago that these broadcasters were claiming that five years was an appropriate licence term. The WGC submits that the environment is not changing so rapidly, nor are Bell, Corus, and Rogers such poor predictors of the business trends in their sector, that dramatically shorter licence terms are required now.
- ES.12 With respect to music programming, short films, and short-form documentaries, the WGC recognizes the value of these types of Canadian programming, but did not make reference to them in our own Petition to the Governor in Council, and as such, we take no particular position on how to best support this type of content. We do, however, oppose the proposal to categorize music videos and short-form documentaries as PNI (it seems likely that short films would generally already be considered PNI by virtue of Category 7(g) "Other drama"). The Commission has already set out in the Create Policy a process and criteria by which to determine whether a particular type of programming should be including in the definition of PNI. The process involves a policy proceeding, which this is not, and a three-part test which, the WGC's preliminary view, is likely not met in these cases.

Introduction

1. At its core, this proceeding is about the continuing attempt by Bell Media Inc. (Bell) and Corus Entertainment Inc. (Corus) to drastically reduce—or seek the "flexibility" to drastically reduce—their level of investment in Canadian programs of national interest (PNI) to well below their historical

spending on this type of programming. This massive reduction undergirds an apparent strategy to “compete” with foreign “over-the-top” (OTT) services like Netflix by largely abandoning Canadian programming in PNI genres, in favour of some other, undisclosed programming strategy, but one which clearly does not place Canadian drama, children’s programming, or documentary at the fore. The WGC submits that such a strategy may be in the perceived best interests, short term or otherwise, of these broadcasters, but it is not consistent with the objectives of the *Broadcasting Act* (the Act) and therefore cannot be endorsed by the Commission.

2. The WGC submits that the Commission must place the current proceeding in its historical context. In 2010, the Commission examined the television policy that had been in place since 1999 and concluded that it had not worked effectively to generate a sufficient level of investment in Canadian programming by private, English-language broadcasters. Simply put, broadcasters were significantly underinvesting in Canadian content. As such, the Commission developed Broadcasting Regulatory Policy CRTC 2010-167 (the Group Policy),¹ which was intended to *grow* such investments from these sub-optimal levels. The mechanism chosen to do this—expenditure requirements set as a percentage of broadcasting revenues—was premised on the growth of those revenues, and it was ultimately ineffective, unfortunately, due to stagnation and/or decline of revenues. The intention, however, to *increase* broadcaster investment from these historical levels, was clear. Today, even as the denominator of the PNI equation (revenues) is under threat, Bell and Corus continue to seek to reduce the numerator (the percentage) itself—a “double whammy” for PNI spending that would see these requirements plummet in real dollar terms. A percentage-based spending requirement like that for PNI *already* accounts for revenue decreases by its very nature. Yet broadcasters still seek to lower the percentage itself. This was their proposal to the Commission in 2016, and this is their proposal now. The 6% PNI level now advocated by both Bell and Corus is still *significantly below* their historical PNI spending of 8% and 9% respectively. This is the antithesis of the spirit and intent of the group-based policy, it is contrary to the logic of the Let’s Talk TV proceeding, and it is a repudiation of this reconsideration proceeding and of the federal Cabinet order that precipitated it. The WGC submits that it is therefore still unacceptable.
3. Bell and Corus have looked to their future in Canadian programming in the PNI genres, and they seem to see little role for themselves there. It seems reasonable to conclude, therefore, that their strategy for competing with the compelling, high-quality drama, children’s, and documentary programming on OTT services like Netflix and Amazon Prime is simply not to compete. If this is true, then we submit that the Commission cannot facilitate that approach given the Broadcasting Policy for Canada set out in the Act. These broadcasters have benefitted, and continue to benefit, from a variety of regulatory protections and flexibility, including those provided in their most recent licence renewal decision. Their most fundamental remaining obligation is to invest a fraction of their revenues in Canadian programming, including PNI. The WGC submits that they must do so, at the very least, at the historical levels of the recent past, and frankly should be required to do so at a higher level, as a percentage of revenues, given the challenges to those revenues, the need to maintain meaningful dollar-value investment, the intent of the Group Policy, and the objectives of the Act.

¹ Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services*.

Scope of Proceeding

4. As stated in the Notice of Consultation to this proceeding (the Notice), Order in Council P.C. 2017-1060, dated, 14 August 2017 (the OiC), refers back to the Commission for reconsideration and hearing the decisions, contained in Broadcasting Decisions CRTC 2017-143 to 2017-151 of May 15, 2017, to renew the broadcasting licences for the television services of large French-language ownership groups and large English-language ownership groups. In respect of the decisions, contained in Broadcasting Decisions CRTC 2017-148 to 2017-151 of May 15, 2017 (the 2017 English Renewal Decisions), to renew the broadcasting licences for the television services of large English-language ownership groups, the OiC states that His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, is of the opinion that it is material to the reconsideration and hearing that the Commission:
 - Consider how it can be ensured that significant contributions are made to the creation and presentation of programs of national interest, music programming, short films and short-form documentaries, and
 - Take into consideration that creators of Canadian programming are key to the Canadian broadcasting system and that, while the industry is going through a transformation, Canadian programming and a dynamic creative sector are vital to the system's competitiveness and contribute to Canada's economy.
5. The WGC acknowledges that the OiC limits the scope of the Commission's reconsideration of the 2017 English Renewal Decisions to the above-noted matters. For the WGC's part, our focus was and is on PNI, and as such that is the focus of our submissions in this proceeding.
6. We note, however, that while Bell,² Corus,³ and Rogers Media Inc. (Rogers)⁴ state that they also agree that the OiC expressly limits the scope of this reconsideration, they nevertheless propose a number of changes that clearly extend well beyond the parameters set out in the OiC, such as lower Canadian programming expenditure (CPE) requirements, lower independent production requirements, and a shorter, 3-year licence term. The WGC will address each of these points on their merits below. However, in addition to those points, we submit that these proposals are well and clearly beyond the terms of the OiC and outside the scope of this proceeding, and as such should not be entertained by the Commission at this time.

PNI Spending Requirements

7. 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 very arguably the primary manner in which its various social and cultural objectives are given effect. Indeed, it's virtually impossible to imagine a distinct, meaningful "Canadian broadcasting system" without Canadian programming. The creation of Canadian programming has long been the key challenge of

² Comments of Bell Media Inc., 1 November 2017, para. 5-6.

³ Corus Supplementary Brief, October 31st, 2017, pgs. 9-10.

⁴ Response Letter of Rogers Media Inc., October 31, 2017, para. 5.

the English broadcasting system, faced as it is with the multiple difficulties of being produced for a small market while being linguistically and geographically proximate to the largest media production centre on the planet.⁵

8. PNI has long been a central component of Canadian programming. In creating the category, the Commission said, “Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.”⁶ PNI was preceded by earlier regulatory concepts such as “priority programs”⁷ and “under-represented programs”, which also included drama and documentary.⁸ The notion that these genres are of special importance in the Canadian broadcasting system is well established and supported by numerous parties, including the WGC, and has not to our knowledge been challenged by Bell, Corus, or Rogers themselves.
9. It is no surprise, then, that a key preoccupation of the Commission is and has long been to respond to these challenges faced in the creation of CPE and, in particular, PNI. In the Group Policy, the Commission examined the policy tools available to it in this respect and, among other things, turned from exhibition requirements for private English-language broadcasters to expenditure obligations, expanding CPE requirements and creating the PNI category, each with their own spending obligations. The WGC has applauded this move by the Commission, and agrees it is one of the best ways to promote the creation of new Canadian programming. In Broadcasting Regulatory Policy CRTC 2015-86, *The way forward - Creating compelling and diverse Canadian programming* (the Create Policy),⁹ arising from the “Let’s Talk TV” consultation, the Commission went further, scaling back exhibition requirements while expanding expenditure obligations. Given a number of other policy changes made by the Commission following the Let’s Talk TV proceedings, the WGC perceived that the Commission was turning to expenditure rules as *the* primary support for Canadian programming. In the oral phase of the Let’s Talk TV proceeding, we said that if the Commission were going to rely primarily on expenditure requirements to support Canadian programming—while relaxing or eliminating regulation on things like exhibition, genre exclusivity, and preponderance, with unbundling also added in—then those expenditure requirements must be at sufficient levels and the rules must be ironclad.¹⁰ We continue to believe that today.

History and Context of the Group Policy Re: PNI

10. As we stated in our comments in respect of Broadcasting Notice of Consultation CRTC 2016-225, the licence renewal proceeding which lead to the decisions currently under review (the 2016 Renewal Proceeding), it is crucial to understand the full history of PNI (and CPE) spending requirements, and how we got to where we are today. Preceding the Group Policy was Public Notice CRTC 1999-97,

⁵ The WGC went into further detail on these challenges in our written submission to Broadcasting Notice of Consultation CRTC 2017-359: *Call for comments on the Governor in Council’s request for a report on future programming distribution models*, at paras. 26-37. (http://www.wgc.ca/files/WGC%20Submission_BNC%202017-359_Future%20programming%20models_FINAL.pdf)

⁶ Broadcasting Regulatory Policy 2010-167, para. 71.

⁷ Public Notice CRTC 1999-97.

⁸ Public Notice CRTC 1994-10.

⁹ Broadcasting Regulatory Policy CRTC 2015-86, *Let’s Talk TV: The way forward - Creating compelling and diverse Canadian programming*.

¹⁰ Broadcasting Notice of Consultation CRTC 2014-190, *Let’s Talk TV*, Transcript, September 11, 2014, 9410-9411.

entitled, *Building on success - A policy framework for Canadian television* (the 1999 TV Policy). In a paper prepared for the 15th Biennial National Conference: New Developments in Communications Law and Policy, Professor Douglas Barrett, following interviews with 16 industry veterans, summarized the 1999 TV Policy as follows:

Suffice to say, [the 1999 TV Policy] is one of the most bitterly controversial decisions on record. At a recent industry conference the [then] Chair said simply that the approach set out in the policy “had not worked”.

The part of the policy that got everyone steamed involved the removal of all previous requirements for expenditures on Canadian programming and their replacement with a regime requiring a minimum of 8 hours per week of “priority programming”. Further, a related policy release defined priority programming in a manner that gave wide flexibility and latitude to broadcasters to avoid costly commitments to the carriage of such categories as drama and documentaries by, for example, including entertainment magazine programming in the definition. In addition, the Commission reinforced its definition of prime time as running from 7pm to 11pm, permitted the scheduling of priority programming in the shoulder time period before 8:00pm.¹¹

11. The WGC was among those who were “steamed”. In our view, one of the key outcomes of the 1999 TV Policy was that broadcasters, in general, focused on less expensive Canadian programming in order to fill hours to meet the exhibition requirements. If the Commission in 1999 had hoped that the requirement to dedicate lucrative peak-viewing time slots to Canadian programming would incent broadcasters to maximize the quality and value of that programming by robustly investing in it, that hope was frustrated. Instead, broadcasters generally spent as little as they thought feasible and directed the results to shoulder periods and weekends. As a result, far less was invested in Canadian programming than what would be considered optimal. The crucial point is that in the lead-up to the Group Policy in 2010, broadcasters were *underspending*, and this was a key component of what “had not worked” about the 1999 TV Policy. And it was this very underinvestment that was to effectively become the benchmark for what followed.
12. In the WGC’s view, the Group Policy, and its focus on expenditures, was an improvement over the previous policy framework. The Commission set minimum spending by broadcasters on Canadian programming as a percentage of broadcasters’ revenue. Those percentages were set, however, based on the historical spending in the year prior. As stated in the *Group-based licence renewals for English-language television groups – Introductory decision*, in which the Group Policy was implemented [emphasis added]:

In the Commission’s view, the group-based policy clearly contemplates that CPE requirements for conventional television stations be set at a specific level throughout the licence term. This level should be consistent with historical spending by the group...

¹¹ Douglas Barrett, Nicholas Mills, “Top Ten Game Changing CRTC Decisions”, 15th Biennial National Conference: New Developments in Communications Law and Policy (A National Symposium of The Law Society of Upper Canada and the Media and Communications Law section of The Canadian Bar Association), April 1, 2010, pg. 8-14.

.... Having taken into consideration both the financial information submitted by the groups as well as the various evidence and proposals submitted by the groups and interveners, the Commission continues to be of the view that a group CPE level of 30% would be appropriate for each of the designated groups. This level is consistent with historical expenditures, ensures substantial stable funding for Canadian programming, and places a reasonable limit on foreign programming expenditures.

... Having examined the financial information submitted by the designated groups as well as the proposals and evidence submitted by interveners, the Commission considers that a PNI expenditure level of 5% would be appropriate for the Bell Media group and the Shaw Media group, and that a PNI expenditure level of 9% would be appropriate for the Corus group. In each case, the Commission has taken into consideration the historical PNI expenditures spanning the 2008-2009, 2009-2010 and 2010-2011 broadcast years and rounded these expenditures down to the nearest percentage point.¹²

13. While the first two paragraphs above refer to CPE, it seems clear that the Commission's intention was the same with respect to PNI, since the exact same mechanism was used for both CPE and PNI. As such, the CPE and PNI levels set by the Commission in 2011 were based on historical expenditures. But these historical expenditures were those made during the term of the 1999 TV Policy, during which time broadcasters were underinvesting. This allowed for lower broadcaster spending minimums than what many, including the Commission itself, considered ideal. Compounding this was that these years also coincided with a major drop in television advertising revenue as a consequence of the recession of the late 2000s and early 2010s, which itself followed the worldwide financial crisis of 2007-2008. Basing CPE and PNI on historical spending during this period effectively resulted in a "double whammy" which depressed spending levels significantly from where we think they should have been. The WGC, among others, proposed a 10% PNI spending requirement at the time.
14. Nevertheless, the Commission clearly believed that these requirements were a starting point to get to *increased* spending on Canadian programming. The Commission believed that growth in Canadian programming spending would be achieved through rising broadcasting revenues, which would finally rectify the problems wrought by the 1999 TV Policy:

While this percentage level will remain fixed over the licence term, the dollar value of this CPE requirement will increase as conventional television station revenues increase, and will not be limited or offset in any way by increases in specialty and pay services revenues. Similarly, specialty and pay services will continue to have fixed CPE percentage levels, which also represent dollar values that will increase as revenues increase, without a limitation or offset related to conventional television station revenues. In the Commission's view, this method is the most likely to result in a greater overall contribution to Canadian programming by each of the groups.¹³ [Emphasis added.]

15. Unfortunately, this did not work out as intended. As we stated in the 2016 Renewal Proceeding, using Bell Media as an example and based upon information then filed by Bell (and its predecessor

¹² Broadcasting Decision CRTC 2011-441, paras. 21, 29, and 48.

¹³ *Ibid*, para. 22. Again, the explicit reference is to CPE, but the identical mechanism was applied to PNI, indicating an identical intention.

CTVglobemedia) and published by the Commission, PNI spending decreased for Bell, not only during the 2011-2016 licence term, but also in comparison with several years preceding that term, prior to the implementation of the group-based licensing regime (see Table 1 below).

Table 1: Bell Media/CTVglobemedia Historical PNI Spending

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Drama and Comedy (Cat. 7)	\$73,867,207	\$50,714,287	N/A	N/A	\$39,230,571	\$55,496,021	\$53,825,000	\$24,620,000
Long-form Documentary (Cat. 2b)	\$22,839,669	\$19,905,960	\$17,994,609	N/A	\$28,474,763	\$30,078,702	\$30,026,000	\$35,975,000
Awards Shows (not including Cat. 11a)	\$2,356,501	\$2,172,799	\$2,744,419	N/A	\$2,774,000	\$7,196,652	\$8,237,000	\$7,130,000
Total PNI	\$99,063,377	\$72,793,046	N/A	N/A	\$70,479,334	\$92,771,375	\$92,088,000	\$67,725,000

Notes:

- 1) Amounts above exclude any Canada Media Fund top-up.
- 2) As part of the first group licensing proceeding in 2010-2011, the CRTC required the broadcast groups to file historical (i.e., 2007-2008, 2008-2009, and 2009-2010) Long-form Documentary and Awards Shows spending data for the group as a whole. The numbers above prior to 2011-2012 are those filed by then-CTVglobemedia.

Sources:

- 1) Data filed by then-CTVglobemedia during the first group licensing proceeding in 2010-2011 (File name: DOCS-#1426082-v1-2010-1261-6-CTVgm-_Group-Tables.XLS)
- 2) Bell Media/CTVglobemedia Aggregated Annual Returns
- 3) 2007-2008 and 2008-2009 pay and specialty TV drama spend data come from the CRTC's Pay and Specialty TV Programming and Production Expenses database made available at that time by the CRTC to the WGC

16. These numbers, particularly with respect to drama and comedy programming, were and are very concerning, and we are now in an era of declining revenue for conventional television and slowed revenue growth for discretionary services. As such, we cannot rely on revenue growth to get us to a desired spending level from where the baseline was set in 2011. Indeed, in the Notice to the 2016 Renewal Proceeding, the Commission reported that “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.”¹⁴ This cannot have been the intended medium-to-long term outcome of the Group Policy.

17. The WGC submits that the entirety of the discussion on the proper levels for PNI must be considered in this context. The Commission agreed in 2010 that the previous policy had resulted in suboptimal support for Canadian programming, and sought to raise spending gradually by relying on revenue growth. If spending before 2010 was suboptimal, then CPE and PNI spending requirements that were based on that historical spending—and, in the case of PNI, rounded *downwards* from there—were also suboptimal. If we are now in an era in which we cannot rely on revenue growth to get spending on Canadian programming to stronger levels, then we submit that the Commission should very closely consider *raising* the percentages for PNI. A percentage-based model naturally responds to rising or falling revenue levels, and as such increased spending requirements as a percentage of revenue

¹⁴ Broadcasting Notice of Consultation CRTC 2016-225, para. 19.

should not represent a significant impediment to broadcasters' financial health. Given where we've started, the WGC strongly believes it's the correct direction to go in. The alternative is the cumulative negative effects of four factors as described above: (Historical benchmarks based on underspending under the 1999 TV Policy) + (Historical benchmarks based on spending during the 2007-2008 worldwide financial crisis) + (Challenged/reduced broadcasting revenues) + (Reduced PNI percentage) = "Quadruple Whammy". There's little or nothing we can do about the first three factors—we should at the very least not be hit by the fourth as well.

PNI Levels for the Current Licence Term

18. In the Notice of Consultation to the 2016 Renewal Proceeding, the Commission stated the following with respect to PNI:

For groups in the English-language market, the Commission has concluded that the current PNI requirements will be maintained, including the specific program categories, as well as the condition of licence requiring that at least 75% of PNI expenditures be dedicated to independent producers.¹⁵

19. Yet in the 2017 English Renewal Decisions, the Commission did not in fact do this. Several ownership changes occurred within the designated groups since the implementation of the Group Policy. Most notably for the English-language market, Bell acquired the assets of Astral Media and divested itself of a number of services, and Corus acquired the assets of Shaw Media Inc. Given these changes, the WGC argued in the 2016 Renewal Proceeding that the Commission should recalculate the applicable PNI requirements for the new group as it did, for example, with respect to the Astral group when its assets were purchased by Bell in 2013.¹⁶ As it did in that instance, and pursuant to the Group Policy, we expected that PNI would be recalculated based on historical spending of the previous three-year period, subject to the Group Policy statement that CPE would be 30% at a minimum.¹⁷

20. The WGC co-commissioned research by Boon Dog Professional Services Inc. to determine precisely what PNI levels on that basis should be, and that research was appended to our submissions in the 2016 Renewal Proceedings. Our calculation of historical PNI levels, based on the data that was publicly available during that proceeding, and subject to the Commission's own calculations based on complete data, resulted in a group PNI level of 8% for Bell, 9% for Corus, and 5% for Rogers. That research also calculated that if the 5% PNI level Bell then proposed (and the Commission later adopted) were to apply for the 2015-2016 broadcast year using 2014-2015 revenues for the then-proposed Bell group, actual required PNI would have been \$17.5 million less (or 21% lower) than would otherwise have been required under then-existing PNI levels. Further, if the 5% PNI level Corus then proposed (and the Commission later adopted) were to apply for the 2015-2016 broadcast year using 2014-2015 revenues for the services in the then-proposed Corus group, actual required PNI would have been \$23.2 million less (or 27% lower) than would otherwise have been required under existing PNI levels. The cumulative impact of these two proposals would be \$40.7 million less in PNI

¹⁵ Broadcasting Notice of Consultation CRTC 2016-225, para. 30.

¹⁶ Broadcasting Decision CRTC 2013-310, paras. 206-210; Broadcasting Decision 2014-62.

¹⁷ Para. 50-52; Broadcasting Decision CRTC 2011-441, para. 29. Notably, the Commission raised Astral's CPE above 30%, to 32%.

spending, and if this were multiplied by a 5-year term,¹⁸ this would result in a loss of over \$200 million over the licence term *for PNI spending alone*. And since broadcaster spending triggers other public and private investment, the total impact could be larger still. As the WGC stated at the time, such an impact would be massive, extremely negative to both Canadian creators and Canadian audiences, and cannot have been the Commission's intention under either the Group Policy or the Create Policy.

21. Nevertheless, in 2017 English Renewal Decisions, the Commission elected to take a "standardized" approach to PNI, which was also a lowest-common-denominator approach, setting PNI for Bell, Corus, and Rogers at 5%. As the Commission is aware, the WGC, along with other groups representing the Canadian production community, petitioned the Governor in Council pursuant to subsection 28(1) of the Act, to set aside or refer back for reconsideration these decisions based on this PNI determination. The Governor in Council ultimately granted these petitions, which is the cause of this proceeding.
22. The WGC has appended its Petition to the Governor in Council, dated June 27, 2017, to this submission. As such, we will not repeat here our arguments in this respect in full. In brief, however, they included:
 - a) 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.
 - b) The Commission is statutorily prohibited from establishing a 5% standard PNI level on the basis of "streamlining" or any other administrative rationale.
 - c) Elimination of Genre Exclusivity is no basis for departing from longstanding CRTC policy and practice in support of PNI, and related broadcasting policy objectives.
 - d) 5% PNI was an inexplicable reversal of the Commission's promised *quid quo pro* to maintain PNI levels in light of fundamental deregulation elsewhere.
 - e) 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.
 - f) The Commission failed to provide sufficient and adequate reasons to depart from longstanding policy and practice, and therefore the Decisions must be found to derogate from the broadcasting policy objectives of the Act.
 - g) The decisions were deeply flawed and will cause undue harm to Canada's domestic independent production and particularly its screenwriters.

23. The Governor in Council granted the petitions, and has referred back the decisions to the Commission, directing it, among other things, to:

- ii. in respect of the decisions, contained in Broadcasting Decisions CRTC 2017-148 to 2017-151 of May 15, 2017, to renew the broadcasting licences for the television services of large English-language ownership groups, consider how it

¹⁸ Recognizing that such impacts are based upon 2014-2015 revenues, and that revenues are likely to vary throughout the licence term.

can be ensured that significant contributions are made to the creation and presentation of programs of national interest, music programming, short films and short-form documentaries, and

- iii. take into consideration that creators of Canadian programming are key to the Canadian broadcasting system and that, while the industry is going through a transformation, Canadian programming and a dynamic creative sector are vital to the system's competitiveness and contribute to Canada's economy.
24. Given all this, it is disappointing in the extreme to find that now, Bell and Corus not only continue to propose PNI requirements that are well below their historical spending levels, but further seek additional regulatory "relief" in apparent exchange for this "offer". In short, it appears that the broadcasters are engaged in virtual horse-trading with the OiC, in what we submit is flagrant disregard for its clear spirit and intent. Among other things, they propose PNI levels that remain strikingly low by historical standards, in exchange for lower CPE requirements, which would leave the creators of Canadian programming in a net-worse position overall than they would have been before. If this truly were a negotiation, one might be forgiven for seeing such proposals as bargaining in bad faith.
25. The WGC submits that the appropriate PNI for Bell, Corus, and Rogers is 8%, 9%, and 5% for each group, respectively, *at a minimum*, which is the historical spending for each group, rounded to the nearest whole number. These were the historical spending levels of each of these designated groups as measured during the 2016 Renewal Proceeding, and according to the data on the public record of this proceeding, as analyzed and summarized in "Analysis of Financial and CPE and PNI Spending Data Filed by the Large English-Language Broadcast Groups as Part of their Group Licence Renewal Reconsideration Applications (Broadcasting Notice of Consultation CRTC 2017-429)", prepared by Mario Mota, Boon Dog Professional Services Inc. (the 2018 Boon Dog Report), which is appended to this document, they remain the historical spending levels now.
26. Moreover, the WGC submits that: a) the OiC directs the Commission to "take into consideration that creators of Canadian programming are key to the Canadian broadcasting system and that...Canadian programming and a dynamic creative sector are vital to the system's competitiveness and contribute to Canada's economy"; b) the clear spirit and intent of the "Creative Canada" vision statement of September 28, 2017,¹⁹ is also to support Canadian creative talent; c) the intent of the Group Policy, as described above, was to *grow* investment in PNI; and, d) a mechanism based on revenue growth can no longer be relied upon to increase PNI investment. As such, we submit that the Commission must therefore *increase* the PNI percentages to attain the desired objectives. The WGC proposes an increase of 1% above each group's historical spending, for a PNI for Bell of 9%, Corus of 10%, and Rogers of 6%.²⁰ As is currently the case, these percentages are based on broadcasting revenues, so

¹⁹ Speech: Launch of Creative Canada - The Honourable Mélanie Joly, Minister of Canadian Heritage, September 28, 2017 (https://www.canada.ca/en/canadian-heritage/news/2017/09/creative_canada_-_a_vision_for_canada's_creative_industries.html)

²⁰ This is an amendment of the position the WGC has taken in the past. In the 2016 Renewal Proceeding and our Petition to the Governor in Council, the WGC consistently argued, as we do above, that the intent of the Group Policy was always to increase spending on PNI, and therefore the Commission would be justified in increasing PNI percentages. We said then, however, that the WGC was nevertheless prepared to accept PNI percentages at historical levels. The WGC is no longer prepared to do so. Given recent events, including content of the OiC, the

they can and do automatically adjust to the size of each group, as well as to fluctuations in their revenues, up or down.

27. The WGC believes that it continues to be appropriate for each of the Bell, Corus, and Rogers designated groups to be held to PNI minimum obligations that are at or above their own historical PNI spending as a percentage of revenue. This clearly means different PNI percentage requirements for each group, rather than “standardized” percentages. However, if the Commission determines that standardization of PNI percentages is necessary—a matter we will speak to in greater detail below—then we submit it clearly cannot take the “lowest common denominator” approach to standardization that it did in the 2017 English Renewal Decisions, for several reasons, not the least of which is that this is the very decision that the Governor in Council has referred back to the Commission via the OiC.
28. If standardization is determined to be a priority of the Commission, we submit that it can pursue it in a number of ways. One is to reflect, as discussed in greater detail below and in the WGC’s Petition to the Governor in Council, that Bell and Corus have more in common with each other, given the nature, size, and makeup of each designated group, than they do with Rogers, and to set Bell and Corus at the same level while “making an exception” for Rogers, not unlike what the Commission did in implementing the Group Policy in 2011. Another option is to set PNI at the *highest* common denominator for all groups, based on the reasoning that if one group has proven that it is possible for a Canadian English broadcasting corporate entity to sustainably invest at that level—and as a *percentage* of revenue, which *automatically* scales to the size of each group—then it should be attainable for all groups. Again, such an approach would better attain the original objective of the Group Policy to *increase* investment in PNI.
29. In some “standardized” scenarios, at least one broadcaster group—most likely Rogers—could see its PNI obligations, as a percentage of revenue, significantly increase above its historical spending levels. Such an outcome would nevertheless be a necessary result of the prioritization of standardization which doesn’t come at the expense of PNI investment levels in the process. Ultimately, it seems inevitable that some tension exists between maintaining historical spending commitments and standardization. The WGC submits that, however that tension is resolved, it’s clear the Commission cannot sacrifice the former to the latter.
30. And yet, despite all this, Bell and Corus continue to propose below-historical PNI requirements which, if accepted, would result, over the final four years of the current licence term, in more than \$112 million *less* in PNI spending for Bell,²¹ and almost \$144 million *less* in PNI spending for Corus,²² as compared to both broadcast groups’ historical levels. In support of this \$256 million aggregate decline in spending, and the larger ripple effects it will have on other sources of financing normally triggered by broadcaster investment, broadcasters continue to make arguments in favour of historically low PNI requirements. The WGC would like to respond to these in turn.

Creative Canada announcements, and broadcasters’ continued, strident opposition to reasonable PNI investment commitments—and the very future of the Canadian broadcasting system that they represent—we now feel it is time to require these broadcasters to step up, and not step away, with respect to robust PNI investment.

²¹ 2018 Boon Dog Report, pg. 5, “Variance between Bell projected PNI spending and 8% PNI requirement” (shaded yellow).

²² 2018 Boon Dog Report, pg. 13, “Variance between Corus projected PNI spending and 8% PNI requirement” (shaded yellow).

The role of history—and a vision of the future

31. The first, and perhaps primary argument appears to be that changes in the broadcasting landscape in recent years have rendered historical considerations moot, to be given no consideration. Indeed, this was Corus’s explicit position in the 2016 Renewal Proceeding, as they proposed CPE and PNI levels that were based wholly on their own, subjective assessment of what they thought was appropriate going forward.²³ In this proceeding, Bell and Corus place emphasis on the “new” competitive challenges that have emerged in the broadcasting sector over the past 18 or so months. Bell states:

Only 18 months [after the 2016 Renewal Proceeding], [the competitive environment for Canada’s television broadcasters] has transformed beyond expectations and the challenge is even more urgent. Traditional broadcasters must now compete with a growing roster of foreign streaming services and international Internet giants for program rights, subscriber and advertising dollars, and viewers.²⁴

32. Similarly, Corus argues:

We believe that [the transition and the transformation that the industry is undergoing] is the most important factual context upon which to determine how to ensure that major media groups make significant contributions to the creation and presentation of certain types of programming.²⁵

33. While neither Bell nor Corus directly responded to the WGC’s comments on the longer-term history of the CPE and PNI mechanisms during the 2016 Renewal Proceeding—and, oddly in our view, the Commission did not appear to examine it during the 2016 Renewal Proceeding either, nor reference it in its 2017 Renewal Decisions—this has apparently been their view nevertheless.

34. In response to these “anti-historical” arguments, the WGC would make the following points. Firstly, as we said in the 2016 Renewal Proceeding, Bell and Corus were and are themselves inconsistent on their own point in this regard. Both Bell and Corus argued 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 in the 2016 Renewal Proceeding 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”.²⁶ Yet what is an “asset mix” other than a group of services and brands that have acquired a certain identity over time? That’s history, and Bell and Corus relied upon it when it suited their argument. Even now, in this current reconsideration proceeding, Bell claims that CPE requirements “should more closely align with past

²³ E.g. Application of Corus Entertainment Inc., “Responses to Request for Additional Information – May 30th, 2016”, Appendix A, pg. 11-12.

²⁴ Comments of Bell Media Inc., 1 November 2017, para. 7.

²⁵ Corus Supplementary Brief, October 31st, 2017, pgs. 12-13.

²⁶ See, for example, Corus at [Transcript, November 28, 2016](#), paras. 929-934, 944-946.

spending”²⁷ and that a 28% CPE would “better reflect historical spending”.²⁸ It seems that, in Bell’s view, history is relevant or irrelevant entirely depending on the argument being made.

35. Secondly, we would note what such arguments imply for the broadcasters’ fundamental business strategy going forward, which posits Canadian programming as if it were a competitive liability. The WGC strongly believes, now more than ever, that Canadian programming—and especially PNI—is not a liability, but a core strength that these broadcasters should be basing their future long-term strategies on. It is the best way, and perhaps the only way, that they can remain relevant to Canadian audiences who no longer require their services as middlemen through which to access Hollywood and other foreign content. We submit, however, that if the broadcasters themselves do not share our vision, the Commission must impose it upon them, so long as there is a *Broadcasting Act* and Canadian private broadcasters continue to benefit from the privileges that it confers upon them.
36. Thirdly, we submit that while some of these developments within the sector have indeed occurred only in the past 12-18 months, they were entirely predictable—and widely predicted—well before then. The implication that, in 2016, with Netflix successfully established in Canada for over five years, nobody could have predicted that something like Amazon Prime, CBS All Access, or DAZN would be next, so that today it’s a “whole different world”, is simply untrue. Everybody was predicting it. Even so, traditional broadcasting, while clearly facing challenges, remains generally healthy and relevant. Television programming revenues in Canada equaled \$7.3 billion in 2016, an *increase* of 1.7% from the year before, and Canadians watched an average of 26.6 hours of TV each week.²⁹ Aggregate profit before interest and taxes (PBIT) margins for English-language discretionary services—by far, the largest sector of English TV broadcasting services—was a healthy 22% that year.³⁰ Recent predictions suggest that even as audiences diversify their viewing, including a shift to online and on-demand services, TV is likely to continue to remain relevant, even among younger cohorts.³¹
37. What is also striking about broadcaster arguments about competitive challenges is how they completely contradict the statements these same broadcasters were making just over a year ago, when they insisted that PNI programming was “in their DNA”, and a 5% PNI requirement would only be a “floor” which they would very likely surpass. For example, at the public hearing phase of the 2016 Renewal Proceeding, Corus said:

MS. WILLIAMS: And it is a floor for us, it’s not a ceiling. So if we continue to play in spaces that actually really warrant a higher PNI because we get the audience out of it and the value out of it then, believe me, that’s what we would decide to do.³²

38. Similarly, in August, 2017, Bell, Corus, and Rogers published a joint open letter, in which they said:

²⁷ Comments of Bell Media Inc., 1 November 2017, para. 51.

²⁸ Comments of Bell Media Inc., 1 November 2017, para. E7.

²⁹ 2017 Communications Monitoring Report, 4.2 Television Sector.

³⁰ 2017 Communications Monitoring Report, Fig. 4.2.12.

³¹ O’Brien, Greg, “ANALYSIS: As falling TV viewing levels seek a floor (but not at zero), it’s time to think differently, Act differently”, *CARTT*, December 14, 2017 (<https://cartt.ca/article/analysis-falling-tv-viewing-levels-seek-floor-not-zero-its-time-think-differently-act>)

³² [Transcript, November 28, 2016](#), para 1371.

Second, we have a proven track record of exceeding our spending requirements on Canadian programming and, specifically, drama and documentary programming not because we have to, but because it makes good business sense to do so in a global media environment. There is nothing to suggest that will change going forward.³³

39. The WGC never accepted these arguments—we do not tend to believe that rational actors stridently advocate for a “flexibility” that they have no intention of using. But the statements and data provided by broadcasters in this reconsideration proceeding clearly belie their earlier claims. For one thing, the statements that 5% PNI is “just a minimum”, so prevalent in the 2016 Renewal Process, are all but gone from the broadcasters’ submissions in this proceeding. In their place, Corus says that a 6% PNI “will translate into tens of millions of dollars of new investment in PNI content,”³⁴ and Bell speaks of an “increase” which “represents approximately \$27 million over the final two years of the licence term,”³⁵ both clearly implying that such investment would not have been made otherwise. Both broadcasters emphasize the “newness” of the “additional” 1% PNI they are proposing.
40. This is perhaps most evident in the broadcaster’s own programming expense projections for the current and next five fiscal years, which have been summarized in the 2018 Boon Dog Report. As demonstrated on page 5, at the line entitled “PNI as % of prior year revenue” (shaded grey), Bell projects it will spend on PNI 5.8%, 5.7%, 5.6%, 6% and 6% of its prior year’s revenues in 2017-2018 through 2021-2022, respectively. Similarly, as demonstrated on page 13, at the same line title, Corus projects it will spend 6.9%, 6.1%, 5.9%, 5.8%, and 5.6% over the same period. Rogers projects spending 5% for each of these years.
41. Here is clear evidence of broadcaster spending on PNI dropping significantly—by 8% for Corus (\$7.2 million), and by a whopping 23% for Bell (\$23 million)—the very year that they received the regulatory “flexibility” to do so. Bell’s and Corus’s projected spending on PNI only declines further from there, as a percentage of revenue, as a dollar amount, or both, through 2022. This is plainly *not* treating the regulatory minimum as “just a floor”—it is treating it as a requirement, and generally spending to the requirement. In fact, Bell and Corus actually project spending *less* on PNI some years, as a percentage of revenue, than the 6% they themselves are currently proposing.³⁶ Clearly, we cannot rely on these broadcasters’ statements that PNI are “only minimums” that they can be expected to exceed.
42. Finally, as it pertains to “history”, one thing hasn’t changed since 2010—or 1999, for that matter—and that’s the Act itself. As we discussed earlier in this submission, Canadian programming is at the heart of the Broadcasting Policy for Canada in the Act, and remains so today, notwithstanding the

³³ Randy Lennox (Bell), Barb Williams (Corus), and Rick Brace (Rogers), Open Letter, August, 2017 (http://playbackonline.ca/wp/wp-content/uploads/2017/08/ad_hilltimes_aug2017.pdf).

³⁴ Corus Supplementary Brief, October 31st, 2017, pg. 4. [Emphasis added]

³⁵ Comments of Bell Media Inc., 1 November 2017, para. 33.

³⁶ Surely, broadcasters cannot spend less than their minimum expenditure obligations, as a percentage of revenue, and then round it up, as if they had spent the whole percentage number. Such an approach would effectively transform an 8% PNI requirement into a 7.5% PNI requirement, or a 9% requirement into an 8.5% requirement. 0.5% of Bell’s or Corus’s group broadcasting revenue amounts to approximately \$6-\$7 million for *each* group in one year—at least enough to help finance a season of major drama series at *each* group. While rounding may be appropriate to *set* a PNI requirement, it surely cannot be permitted to allow a broadcaster to *meet* that requirement.

changes in the sector. The Minister of Canadian Heritage, Hon. Mélanie Joly, has indicated her intent to review and revise the Act, and the WGC supports that process. But the Minister and the Government of which she is a part have given numerous indications, including in the Minister's "Creative Canada" vision statement of September 28, 2017³⁷, and in the OiC itself, that Canadian content and Canadian creators are as important now as ever before. Until a new Act exists, its objectives remain in effect and, we would argue, so does the lineage of Commission policies seeking to maintain, if not increase, broadcaster investment in PNI, unless and until they are expressly amended by the Commission. For these reasons, history *does* matter, including a 2010 Commission policy that sought to *increase* spending on Canadian programming, including PNI, not to abandon it.

Pitting PNI against other programming categories

43. In addition to these "The World Has Changed" arguments, broadcasters make other arguments for lower-than-historical PNI. Corus pits PNI against its lifestyle programming, and reading its submissions it's hard not to see where it would prefer to spend their Canadian programming dollars. Corus states, "Some of our biggest successes have been with our Lifestyle content. This cannot be overlooked in meeting the objectives of the *Broadcasting Act*..."³⁸ Corus goes on for approximately two pages on the value of its lifestyle and reality programming, before referring to s. 3(1)(s) of the Act that requires private broadcasters to ensure that they "...be responsive to the evolving demands of the public",³⁹ and then concluding that, "It is all original Canadian programming with a strong Canadian voice that creates a Canadian cultural identity that goes beyond our borders."⁴⁰ In fact, drama programming is the most popular category of programming in Canada,⁴¹ and therefore PNI itself *is* "responsive to the demands of the public". Nevertheless, Corus's vision for PNI is no longer of a mere "floor" that will be consistently exceeded. It is a vision of a fixed pie, from which one bigger slice necessarily comes at the cost of another smaller one.
44. Similarly, Bell, Corus, and most of all, Rogers, seek to pit increased PNI spending against another programming category that the Commission has sought to support in the Canadian broadcasting system: local news. Bell,⁴² Corus,⁴³ and Rogers⁴⁴ all make the argument, either express or implied, that increased PNI requirements may or must come at the expense of spending less on local news programming.

³⁷ Speech: Launch of Creative Canada - The Honourable Mélanie Joly, Minister of Canadian Heritage, September 28, 2017 (https://www.canada.ca/en/canadian-heritage/news/2017/09/creative_canada_-_avisionforcanadascreativeindustries.html)

³⁸ Corus Supplementary Brief, October 31st, 2017, pg. 10.

³⁹ Bell echoes this sentiment at Comments of Bell Media Inc., 1 November 2017, para. 33: "In view of the above, we submit that setting the PNI expenditure level at 6% recognizes that broadcasters need the flexibility to innovate and to stay relevant to Canadian consumers and to meet their demand for programming that they want to see."

⁴⁰ Corus Supplementary Brief, October 31st, 2017, pg. 12. [Emphasis in original]

⁴¹ See 2017 Communications Monitoring Report, Table 4.2.14. Drama and comedy (category 7) had the largest viewing share of any other category in English-language and ethnic services, all of Canada (excluding Quebec francophone market) in 2015-2016, at 36.6% of total viewing.

⁴² Comments of Bell Media Inc., 1 November 2017, para 24.

⁴³ Corus Supplementary Brief, October 31st, 2017, pg. 20-21.

⁴⁴ Response Letter of Rogers Media Inc., October 31, 2017, paras. 20-24, 43.

45. To this, firstly, we again point to the mindset behind such arguments, which is that Canadian programming spending is necessarily a fixed pie in which spending on one type of programming must come at the cost of another. But secondly, and more importantly, we submit that the numbers don't support the broadcasters' contention. Looking at the data filed by the broadcast groups in their financial appendices filed with the licence renewal reconsideration applications, for Bell, in 2015-2016, the services that make up the current Bell designated group spent 26% of their Canadian programming spend on programming categories other than news (Category 1) and PNI. Similarly, in the same year, the services that make up the current Corus designated group spent 36% of their Canadian programming spend on programming categories other than news (Category 1) and PNI. Even for Rogers, which has the least flexibility of the designated groups in this regard, and who made the most of this issue, in 2015-2016, the services that made up the former Rogers Media Designated Group spent 61% of their Canadian programming spend on programming categories other than news (Category 1) and PNI.⁴⁵ As such, all three groups have other options on where to cut—if they *choose* to cut—in the face of increased PNI spending, *other* than to “sacrifice” local news. Indeed, it was this very flexibility that was central to the group-based approach, and which was granted to them in exchange for a focus on robust CPE and PNI requirements—requirements that they now are trying to reduce.
46. The Commission has already recently examined the challenges facing local news in Canada, and created new regulatory tools to address them in Broadcasting Regulatory Policy CRTC 2016-224: *Policy framework for local and community television*. The WGC submits that broadcasters seeking to improve the state of local news in the communities they serve should make use of those tools, rather than setting up a false choice between local programming and PNI.

Standardization

47. Then there is the matter of “standardization”. Bell continues to insist that, “it is imperative that all broadcasting groups contribute to PNI at the same level in order to create the same flexibility in programming choice given the elimination of genre protection.”⁴⁶ The WGC disagrees, and submits that it was precisely this erroneous focus on standardization which contributed to the “lowest common denominator” approach which the OiC specifically asks the Commission to reconsider. As the WGC stated in its Petition to the Governor in Council:

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.

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

⁴⁵ Rogers has provided numbers for the past group and not the group going forward as of Sept. 1, 2017. As such, G4 is included, even though it was shuttered on Aug. 31, 2017, and FX and FXX Canada are excluded, which are now part of the new Rogers Group.

⁴⁶ Comments of Bell Media Inc., 1 November 2017, para. 25.

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. 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.

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.⁴⁷

48. As the Commission is aware, the Governor in Council sent back these decisions for reconsideration on the grounds of precisely these arguments.
49. As we’ve noted above, as well as in the WGC’s Petition to the Governor in Council, the WGC submits that “standardization” of PNI percentages—i.e. each of Bell, Corus, and Rogers having identical PNI spending obligations by percentage of revenue—is not necessary, for competitive parity reasons or otherwise. As we stated in our Petition to the Governor in Council:

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. 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.

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.

⁴⁷ Writers Guild of Canada, 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, June 27, 2017, pgs. 11-12.

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.⁴⁸

50. However, as discussed above, if the Commission deems standardization to be a priority, then we submit it simply must not subordinate historical PNI spending levels to achieve it. We submit that the lowest-common-denominator approach adopted in the 2017 English Renewal Decisions is the very thing the OiC seeks the Commission to reconsider.

Meaning of “creator”

51. Lastly, both Bell⁴⁹ and Corus⁵⁰ argue that they themselves are “creators”, and therefore should be taken into consideration as “key to the Canadian broadcasting system”, pursuant to the OiC. This point is simply unsustainable. As the WGC has argued in detail elsewhere,⁵¹ creators are the individual artists who actually do the creative work in bringing a work of art into existence, such as the screenwriters and showrunners that fundamentally create television programming. An art gallery is not a painter, a concert hall is not a composer, and a broadcaster is not a programming creator. Their investment in programming, while incredibly important, does not transform them from being an investor into being a creator themselves. Not only do Bell’s and Corus’s assertion defy the common meaning of the word “creator”, it is also illogical in the context of this reconsideration, since the entire premise of the OiC is the granting of petitions of creator and production groups, against the wishes of the broadcaster groups⁵², to reconsider a decision for 5% PNI that was favoured by those very broadcasters but opposed by creators. It can be presumed that the Governor in Council has not sent back a PNI decision that broadcasters favoured so that the Commission can take into greater consideration the views of those who opposed sending it back in the first place.

Other Regulatory Changes Sought by Broadcasters

52. As we noted earlier, in addition to the matters discussed in the OiC, Bell, Corus, and Rogers are seeking additional regulatory changes and regulatory relief in this proceeding, including reduced CPE requirements, reduced independent production requirements, and a shorter, 3-year licence term. As we discussed earlier, the WGC opposes consideration of these issues since they are not contemplated by the OiC and therefore not properly within the scope of this proceeding.
53. The broadcasters suggest that these issues are related to those in the OiC, however we submit that these arguments are unconvincing. The OiC is clear that this reconsideration is about PNI levels, several types of short-form content, and the recognition that creators—real creators, not

⁴⁸ Writers Guild of Canada, 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, June 27, 2017, pg. 14.

⁴⁹ Comments of Bell Media Inc., 1 November 2017, para. 27.

⁵⁰ Corus Supplementary Brief, October 31st, 2017, pg. 10.

⁵¹ See the WGC’s written submission to Broadcasting Notice of Consultation CRTC 2017-359: *Call for comments on the Governor in Council’s request for a report on future programming distribution models*, at paras. 51-52.

⁵² Randy Lennox (Bell), Barb Williams (Corus), and Rick Brace (Rogers), Open Letter, August, 2017

(http://playbackonline.ca/wp/wp-content/uploads/2017/08/ad_hilltimes_aug2017.pdf).

broadcasters—must be better supported in this regard by these broadcast groups. Nothing else. The contention that CPE or independent production must also be considered because they are “related” to PNI is a tenuous argument that could be made about virtually anything, since virtually all aspects of the broadcasting system bear some relationship to other aspects. If that had been the Governor in Council’s intention, then the 2017 English Renewal Decisions could have been referred back to the Commission in their entirety, without limitation. The broadcasters themselves acknowledge that this did not happen. If it had, the WGC would be interested in the reconsideration of the Commission’s decision not to take any steps to better support script and concept development, which the WGC strenuously argued is central to the success of original television programming, especially PNI.⁵³ But script and concept development was not referred back to the Commission, so the WGC is not making submissions on that topic. We submit that broadcasters are similarly restricted, and that they cannot argue that some things are outside the scope of this reconsideration due to the limitations of the OiC, yet at the same time introduce their own issues which are similarly not in the OiC.

Canadian Programming Expenditures

54. The first issue that is outside of the scope of this proceeding is CPE, which Bell and Corus propose reducing from 30% to 28%.

55. Bell and Corus argue that this is appropriate, at least in part, because the Commission in the 2017 English Renewal Decisions set a 30% CPE “in exchange” for a lower, 5% PNI. Bell says:

However, in the Renewal Decisions, the Commission did not accept the proposals put forward by either BCE or Corus and, in fact, increased CPE levels in exchange for broader flexibility in other areas. More specifically, the Commission established an overall CPE level of 30% of previous year's revenues in exchange for broader programming flexibility including a standardized 5% PNI level. With our commitment to increase PNI spending to 6% in response to the Order in Council, that flexibility is being removed.⁵⁴

56. “Consequently,” Bell says, “it would be appropriate to also revisit the CPE level the Commission established for the large English-language groups.”⁵⁵ Similarly, Corus argues:

The 30% CPE requirement did not represent historical spending in the May 2017 GBL decisions but reflected the fact that the Commission was awarding major media groups a new level of flexibility through the creation of a standardized 5% PNI requirement. With the elimination of this level of flexibility through a higher PNI requirement and the fact that no element of the Create policy was put into question by the OIC, we believe that it is essential that the Commission maintain the level of flexibility established by setting the CPE levels at historical requirements.⁵⁶

⁵³ WGC submission to Broadcasting Notice of Consultation CRTC 2016-225, August 15, 2016, paras. 72-81. (<http://www.wgc.ca/files/WGC%20Submission%20BNC%202016%20225%20Group%20Licence%20Renewal%20FI%20NAL.pdf>)

⁵⁴ Comments of Bell Media Inc., 1 November 2017, para. 50.

⁵⁵ Comments of Bell Media Inc., 1 November 2017, para. 51.

⁵⁶ Corus Supplementary Brief, October 31st, 2017, pg. 21.

57. The WGC submits that there is no evidence to suggest that the Commission linked CPE and PNI in this way. The 2017 English Renewal Decisions make no mention of any such *quid-pro-quo* relationship between CPE and PNI, either explicitly or implicitly. Indeed, the WGC pointed out in its Petition to the Governor in Council that one of the problems with the decision to set PNI at 5% was the *lack* of a policy rationale for it. The Commission did not state that one policy was “in exchange” for the other, and in the absence of such a statement Bell’s and Corus’s contention that they are linked is simply that—an unsubstantiated contention.
58. On the contrary, there is plenty of evidence that the Commission *always* intended for a 30% minimum CPE to apply to the designated broadcast groups, even if the implementation of that intention in 2011 was not completely effective. In the Group Policy, the Commission said:

It is the Commission's preliminary view that the base spending level for each designated group, as an aggregate, should be a minimum of 30% of the group's gross revenues. The Commission considers that this is an appropriate level given the record of the groups' actual spending on Canadian programming in the years 2007, 2008 and 2009, and given the Commission's intention not to impose, at this time, additional obligations on the groups beyond their recent historical expenditures.⁵⁷

59. In implementing this approach, the Commission reiterated:

Having taken into consideration both the financial information submitted by the groups as well as the various evidence and proposals submitted by the groups and interveners, the Commission continues to be of the view that a group CPE level of 30% would be appropriate for each of the designated groups. This level is consistent with historical expenditures, ensures substantial stable funding for Canadian programming, and places a reasonable limit on foreign programming expenditures.⁵⁸

60. Since CPE had not been applied to conventional broadcasting services before, the Commission needed a mechanism to establish their CPE levels, and did so by subtracting the dollar amount of the aggregated CPE requirements for qualifying specialty and pay television services from the dollar amount of the 30% group CPE.⁵⁹ Ultimately, the Commission retained individual conditions of licence for CPE for each service. This meant that since revenues for each service could vary over the licence term, their aggregate CPE spending for each year might not add up to 30% of total group revenues. This in fact happened, and as the Commission itself explained, “Because of these differences and fluctuations in the revenues of individual services, the overall expenditure levels of the proposed groups varied relative to the 30% group target set out in the group-based policy.”⁶⁰ The Commission went on to say:

Accordingly, to avoid a situation in which fluctuations in the revenues of individual services and the group’s composition would affect the CPE requirement of the groups, the Commission considers that a standard 30% CPE level for each group and every service

⁵⁷ Broadcasting Regulatory Policy CRTC 2010-167, para. 50.

⁵⁸ Broadcasting Regulatory Decision 2011-441, para. 29.

⁵⁹ Broadcasting Regulatory Decision 2011-441, para. 30.

⁶⁰ Broadcasting Regulatory Decision 2011-441, para. 29.

within the groups is appropriate. In the Commission's view, such a requirement will ensure that the group collectively contributes to the creation of Canadian programming at an appropriate level.⁶¹

61. WGC submits that it was always the Commission's intention since 2010 for English-language designated groups to have a minimum 30% CPE level, and the decision to set group CPE at 30% in the 2017 English Renewal Decisions was simply the ultimate implementation of that intention, and *not* a "CPE increase" made in exchange for a 5% PNI. As such, the two issues are not directly linked and an increase in PNI pursuant to this reconsideration proceeding in no way necessitates a "CPE decrease".

Independent Production of PNI

62. Bell, Corus, and Rogers all seek a reduction of the percentage of PNI that must be allocated to independently produced programs, from 75% to 25% in the case of Rogers,⁶² and from 75% to 50% in the case of Bell⁶³ and Corus⁶⁴.
63. The WGC opposes these proposals. We do so in part because they are out of scope of this proceeding, as discussed above, and in part because we support the role of independent producers in the Canadian broadcasting system and believe that the proposed reductions would not be consistent with the Act's objective relating to the independent production sector at s. 3(1)(i)(v).

Three-Year Licence Term

64. The WGC opposes the proposal to reduce the licence term of this renewal by two years, so as to expire in 2020, as proposed by Bell,⁶⁵ Corus,⁶⁶ and Rogers⁶⁷.
65. Once again, such a proposal is outside the scope of the OiC, and therefore should be outside the scope of this proceeding.
66. Further, the WGC submits that this proposal is simply a tactic on behalf of Bell, Corus, and Rogers to mitigate the outcome of this proceeding, which may very well result in higher PNI spending obligations for some or all of these broadcast groups. These broadcasters themselves proposed a five-year term in the 2016 Licence Renewal Proceeding, and were confident at the time that such a term was appropriate. They, and the rest of the sector, were just as aware as they are now of the key trends in the industry—the shift to OTT services; the potential entry of new, foreign OTT services into Canada, including by the very U.S. studios and broadcasters that supply so much of their programming; and, the review of the sector by Minister Joly.

⁶¹ Broadcasting Regulatory Decision 2017-148, para. 30.

⁶² Response Letter of Rogers Media Inc., October 31, 2017, para. 54.

⁶³ Comments of Bell Media Inc., 1 November 2017, para. 26.

⁶⁴ Corus Supplementary Brief, October 31st, 2017, pgs. 20-21.

⁶⁵ Comments of Bell Media Inc., 1 November 2017, para. 21.

⁶⁶ Corus Supplementary Brief, October 31st, 2017, pg. 21.

⁶⁷ Response Letter of Rogers Media Inc., October 31, 2017, para. 7.

67. Given the time required to launch and complete this reconsideration proceeding, and unless the Commission makes its reconsideration decision retroactive to September 1, 2017, broadcasters will almost certainly have had the advantage of one year—2017-2018—of a PNI requirement of 5%. Granting a three-year licence term in this proceeding will effectively ensure that the broadcasters only have two years of PNI obligations above 5% (and CPE obligations at 30%) before getting the opportunity to “relitigate” this issue all over again in just over one year from now. It was only last year that these broadcasters were claiming that five years was an appropriate licence term. The WGC submits that the environment is not changing so rapidly, nor are Bell, Corus, and Rogers such poor predictors of the business trends in their sector, that dramatically shorter licence terms are required now.

Music Programming, Short Films and Short-Form Documentaries

68. The OiC asks the Commission, in respect of the English-language ownership groups to, “consider how it can be ensured that significant contributions are made to the creation and presentation of...music programming, short films and short-form documentaries.”

69. While the WGC recognizes the value of these types of Canadian programming, we did not make reference to them in our own Petition to the Governor in Council. As such, we take no particular position on how to best support this type of content.

70. We do, however, oppose the proposal to categorize music videos and short-form documentaries as PNI, put forward by Bell⁶⁸ and Rogers⁶⁹. (It seems likely that short films would generally already be considered PNI by virtue of Category 7(g) “Other drama”.⁷⁰)

71. The Commission has already set out in the Create Policy a process and criteria by which to determine whether a particular type of programming should be including in the definition of PNI.⁷¹ With respect to the criteria, the Commission set out a three-part test as follows:

[A] type of programming should be designated as PNI only if:

- it is generally expensive to produce and carries with it a greater risk of unprofitability;
- the widespread availability of such programming to Canadians is necessary to the achievement of the objectives of the Act; and
- in the absence of regulatory support such programming would not otherwise be available to Canadians.

72. Regarding music programming in particular, the WGC is of the preliminary view that, at the very least, they likely do not meet the first and third for these criteria. Such programming is generally not expensive to produce, certainly in comparison with the drama and long-form documentary

⁶⁸ Comments of Bell Media Inc., 1 November 2017, paras. 45-46.

⁶⁹ Response Letter of Rogers Media Inc., October 31, 2017, pg. 21.

⁷⁰ Appendix to Broadcasting Regulatory Policy CRTC 2010-808.

⁷¹ Broadcasting Regulatory Policy 2015-86, para. 292-297.

programming that currently forms the core of the English-language PNI category, and many music videos are now widely available on the Internet.

73. With respect to the process, the Commission stated:

The Commission will use the above test should it decide to initiate a policy proceeding to add to or remove program categories from PNI in the future. The implementation of any changes to PNI program categories would be done at the time of licence renewals.

74. This reconsideration is not a policy proceeding, and therefore is not the proper forum to consider this matter. A true policy proceeding would present the parties with a greater opportunity to consider the questions raised in their appropriate context. This is not a policy proceeding, nor does it provide that opportunity. While the Commission has stated that the *implementation* of any changes to PNI program categories would be done at the time of licence renewals, it has said just that—implementation, not redefinition.

75. The WGC also opposes the proposals by Bell to include Category 11(a) General entertainment and human interest programs that are focused on Canadian music artists or groups as PNI,⁷² and to create a separate category to allow for “special recognition programs” to qualify as PNI,⁷³ for the same reasons. In addition, we submit that Bell has not provided the level of detail necessary to properly define or explain what “special recognition programs” actually are, and in any event the current proceeding is not the appropriate forum in which to do so.

Conclusion

76. The WGC is pleased to provide comments in this proceeding.

Yours very truly,



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⁷² Comments of Bell Media Inc., 1 November 2017, para. 46.

⁷³ Comments of Bell Media Inc., 1 November 2017, paras 92-94.