



April 26, 2018

Filed Electronically

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

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2018-106 – Application 2017-1027-8: Application by WOW! Unlimited Networks Inc. (WOW) for authority to acquire from Bell Media Inc. (Bell) the assets of the national English-language discretionary service known as Comedy Gold

1. 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.

Canadian Programming Expenditure and Programs of National Interest Requirements

2. The service known as Comedy Gold is currently a part of the designated group of Bell Media Inc. (Bell), and as such has Canadian programming expenditure (CPE) and programs of national interest (PNI) spending requirements consistent with that group, namely, of 30% and 5% of the previous year's broadcasting revenues, respectively.¹ WOW! Unlimited Networks Inc. (WOW), in the context of seeking authority to acquire the service, is requesting to reduce these requirements to 10% for CPE, and to eliminate the service's PNI requirements entirely.²
3. WOW's rationale for this request is based largely, if not entirely, on the argument that it is effectively a "new", independent service, and should be licensed as such pursuant to Broadcasting Regulatory Policy 2015-86 (the Create Policy). With respect to CPE, WOW states:

To this end, WOW has not suggested that a CPE requirement be eliminated, but rather, that WOW simply be subject to the Commission's current CPE policy. This policy states

¹ Broadcasting Decision CRTC 2017-149

² Application by WOW, Appendix 1A, Supplementary Brief, paras. 25-30.

that “with respect to English- and third-language discretionary services, CPE requirements will be implemented for all services with over 200,000 subscribers [...] CPE for licensed services will be established in a case-by-case manner and based on historical levels. However, given the great variation in the revenues and expenditures of discretionary services and the fact that certain services make little or no expenditures on Canadian programming, the minimum level of CPE applied will be 10%.” WOW is simply requesting that the Commission adhere to such policy when determining WOW’s CPE requirement. We have asked for the minimum level to be applied to us because WOW will be a brand new television service with none of the programming that is currently aired by *Comedy Gold*. In this regard, we respectfully remind the Commission that should our application be approved, we are only purchasing the broadcasting licence and none of the associated programming. Consequently, the historical CPE level of *Comedy Gold* should be disregarded.³ [*Emphasis in original.*]

4. Regarding PNI, WOW states:

With respect to the [condition of licence] (COL) pertaining to PNI, WOW noted in our Supplementary Brief that in the case of PNI spending, programming services that are not part of the group licensing framework are not required to abide by a minimum level of PNI spending. Accordingly, WOW again proposes that as a new independent stand-alone service, *Comedy Gold* would not be subject to any PNI spending requirement, consistent with the Commission’s current policy.⁴

5. In both instances, WOW refers to the service to be operated under Comedy Gold’s licence as “new” or “brand-new”.
6. The WGC submits that if the transaction is approved, WOW’s service will not be most accurately described as a “new” service, it will be better described as an existing service acquired from another corporate owner and subsequently rebranded. If it had wished to launch a truly new service, WOW could have chosen to simply launch a new exempt discretionary service or apply for a new discretionary broadcasting licence from the Commission, which in the current regulatory environment is easier to obtain than ever. WOW has chosen to acquire an existing licence and has presumably done so for a reason. While WOW has not specified what that reason or those reasons are, and the Commission to our knowledge has not asked for them, the WGC surmises that one reason, if not the reason, may be the acquisition of the affiliation agreements attached to the licence, which will ensure that WOW’s service will have effective and advantageous distribution by broadcasting distribution undertakings (BDUs). If this is correct, the WGC understands why WOW might have made such a business decision. It does not, however, result in WOW obtaining a “new” service—it results in WOW obtaining an existing service and licence.
7. As an existing service, the licence for Comedy Gold is currently subject to certain conditions, including a 30% CPE and a 5% PNI spending obligation. The WGC submits that such conditions cannot be dealt with in isolation, nor effectively ignored in the context of a transaction, and the existing COLs would have been known to WOW when it chose to acquire the licence. As such, the WGC submits that the

³ Application by WOW, Deficiencies Letter, January 11, 2018, 4th pg.

⁴ Application by WOW, Deficiencies Letter, January 11, 2018, 5th pg.

Commission should retain COLs for the service with respect to CPE and PNI that more accurately reflect its status.

8. In Broadcasting Decision CRTC 2014-388, *Change in the effective control of Disney Junior, Disney XD and Family Channel from Bell Media Inc. to DHX Media Ltd. and licence amendments* (Bell-DHX), the broadcasting service Family Channel retained under DHX its then-existing PNI obligation of 16%, and a CPE of 22% based on historical spending. While Family Channel was a Category A service, and Bell-DHX was determined prior to the Create Policy and related policies released under the “Let’s Talk TV” proceeding, we submit that it nevertheless reflects a reasonable practice on the part of the Commission to retain CPE and PNI conditions of licence notwithstanding the exit of a service from a designated group. Indeed, in this case, WOW has stated that it intends to go forward with the transaction in the event that the current COLs applicable to *Comedy Gold* are retained.⁵
9. Perhaps just as importantly, the WGC submits that the Commission should consider the longer-term ramifications of its decisions with respect to CPE and PNI in this transaction, and the precedent(s) it may set for future transactions. To our knowledge, this is the first transaction involving a broadcasting service being sold from “within” a designated group to an independent, “non-group” broadcaster since the elimination of the genre exclusivity policy. While Comedy Gold is not a large service, and does not have a history of significant spending with respect to CPE and/or PNI, it is entirely possible that a future transaction may involve larger, more important services. We submit that the Commission should consider what would happen if a former Category A service were to be sold to an independent, non-group broadcaster. Similarly, we submit that the Commission should consider whether it would be creating a regulatory incentive for such sales were it to establish a precedent that any service could see its regulatory obligations with respect to CPE and PNI drastically cut through the vehicle of a transaction. The WGC believes that we cannot assume that the past recent trend towards consolidation is a given.
10. WOW’s service is being launched by Canadian industry veterans, including Michael Hirsh, a founding partner of Nelvana, TELETOON, and Cookie Jar as well as Executive Chair of DHX Media, and described in the application as, “a leader and driving force in the birth, development, and evolution of animation and children’s production and programming in this country.”⁶ The WGC has every confidence that Mr. Hirsh and his team will seek the same level of success they have found with past ventures. We submit that this same richness of experience suggests that WOW’s service will be capable of fulfilling robust CPE and PNI levels.
11. The WGC continues to believe that a vital and healthy Canadian broadcasting system results from robust commitments to Canadian programming. We submit that the Commission take this into consideration in this application, both with respect to this service and with future, similar transactions.

Annual Tangible Benefits Reports

12. The WGC recommends the Commission explicitly require Bell to file reports annually detailing spending on tangible public benefits related to this transaction, as a condition of approval of the

⁵ Application by WOW, Deficiencies Letter, January 11, 2018, 3rd pg.

⁶ Application by WOW, Appendix 1a, Supplementary Brief, para. 9.

transaction. This has been a standard requirement in the past, but in cases where the Commission has inadvertently failed to do so explicitly, the broadcasters involved have not filed such annual reports, and it has proven difficult for the Commission to compel them to do so after the fact. These reports are important and necessary to allow industry stakeholders and the public to track benefits spending separate from baseline regulatory obligations.

Conclusion

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

Yours very truly,

A handwritten signature in black ink, appearing to be 'Maureen Parker', written in a cursive style.

Maureen Parker
Executive Director

c.c.: Council, WGC
WOW! Unlimited Networks Inc. (mshulman@wowunlimited.co)

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