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May 27, 2005

Mr. Doug Wilson,
Director, Industry Analysis and Program Monitoring
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Wilson:

RE: Writers Guild of Canada Reply:

Complaint concerning Broadcaster Compliance with Priority Program Requirements for Canadian Entertainment Magazine Programs Pursuant to Public Notice CRTC 1999-97 and 1999-205

A. Introduction & Executive Summary

This is the reply of the Writers Guild of Canada (WGC) to the responses of CTV Television Inc. (CTV), Quebecor Media Inc. (Quebecor) and Global Television Network (Global) regarding the complaint filed with the Commission on March 17, 2005, concerning the above-noted matter. The WGC is not satisfied with the responses filed by the broadcasters and is very concerned about the manner in which the stations in question are operating.

In its response, CTV did not demonstrate that its entertainment magazine program, *etalkDAILY*, complies with the regulatory requirements of Public Notices 1999-97 and 1999-205 that at least two-thirds of running time is devoted to promoting Canadian entertainment. Quebecor, for its part, acknowledged that Toronto One's entertainment magazine program, *The A-List*, does not comply with the Commission's two-thirds regulatory requirements, but undertook to ensure that the program will comply with the Television Policy requirements by the fall of 2005.

As for Global, it submitted that its' *Inside Entertainment* magazine program comes within the definition of priority program because it is a regional production. Consequently, Global did not deal with the issue of whether *Inside Entertainment* ensures that a sufficient portion of its running time is dedicated to the promotion of Canadian entertainment.

One of the foundations of the Commission's Television Policy is the eight hour priority program rule. The Commission has determined that this, along with the Canadian content quotas, would be the fundamental requirement for ensuring that broadcasters provide strong support for the presence of Canadian programming on television. Broadcasters should, therefore, be required to meet this requirement throughout their licence term.

If CTV and Quebecor are permitted to carry on as they are, their entertainment magazine programs are not satisfying the priority program requirements, according to the WGC research and Quebecor's admission. This means that CTV and Quebecor are falling well short of the requirement of broadcasting eight hours of priority programming on average over the broadcast year, and that these broadcasters are operating in breach of their licences.

In light of this, the WGC formally requests:

(a) The CRTC to conduct a full investigation of CTV's *etalkDAILY* to assess whether that program complies with the two-thirds Canadian entertainment requirement set out in Public Notice CRTC 2000-205.

(b) If the Commission finds that CTV's *etalkDAILY* does not comply the two-thirds Canadian content requirement for entertainment magazines, we strongly urge the CRTC to issue a decision requiring CTV to either comply immediately with the two-thirds requirement, or to broadcast alternative programs that qualify as priority programs. That decision should also require CTV to broadcast additional hours of priority programs to make up for any lost hours of priority programs that were improperly reported since CTV's last licence renewal.

(c) The CRTC to conduct an investigation of Quebecor's *The A-List*. Given Quebecor's admission that the program does not comply with the two-thirds entertainment magazine requirement, the Commission should issue a decision requiring Quebecor to either comply with the two-thirds requirement for *The A-List* prior to the autumn of 2005, or to broadcast alternative priority programming until such time as it is in a position to broadcast entertainment magazine programs that comply with the two-thirds requirement. That decision should also require Quebecor to broadcast additional hours of priority programs to make up for any lost hours of priority programs that were improperly reported since the acquisition of Toronto One by Quebecor.

(d) If the Commission issues decisions requiring CTV and Quebecor to comply with the priority programming requirements of their respective licences but the

broadcasters fail to do so, the WGC urges the Commission to require these broadcasters to appear at a hearing and show cause why a mandatory order requiring the licensees to conform to their priority programming conditions of licence should not be issued pursuant to section 12 of the *Broadcasting Act*.

(e) The Commission should review its priority programming rule with respect to regional magazine programs in order to ensure that such programs devote at least two-thirds of their running time to the promotion of Canadian entertainment. It should also review the priority programming rule to ensure that entertainment magazines that count as priority programs reflect a broad range of Canadian artistic talent including Canadian screenwriters, directors and performers (in order to avoid an over-representation of musical artists).

Given the importance of this situation, the WGC respectfully submits that the Commission should address this issue at the present time, rather than wait until the licence renewals of CTV, Global and Toronto One which are more than three years away. If these broadcasters are permitted to continue to operate as they are, many hours of priority programming will be lost to the system over the next three years. For example, it is our understanding that *etalkDAILY* is broadcast five times per week, amounting to 2.5 broadcast hours per week. This is 130 hours over the broadcast year and nearly 430 hours between now and CTV's licence renewal. If in the next three years only half of the *etalkDAILY* episodes meet the set Canadian content requirements, this means that some 215 hours of programming may be falsely classified as priority programming for CTV alone. Our system cannot afford to lose this many hours of Canadian programming and it is imperative that these programs immediately contribute to promoting Canadian shows, stars and audiences for indigenous programming as they were originally intended.

The WGC urges the Commission to review this matter in the immediate future, rather than wait until these broadcasters' licence renewals to address the significant public policy issues that our complaint raises.

The following is the WGC's detailed reply.

B. CTV - *etalkDAILY*

In the complaint filed with the Commission on March 17, 2005 the WGC presented research to demonstrate that CTV's *etalkDAILY* program does not comply with CRTC regulations because it does not consistently devote two-thirds of its running time to the promotion of Canadian entertainment as required by the Television Policy.

The WGC reported findings that the 32 episodes of *etalkDaily* reviewed by the WGC, contained an average of 6.3 minutes devoted to the promotion of Canadian entertainment and stars, while the CRTC regulation requires that the broadcaster devote at least 16 minutes, or two-thirds of the show's 22 minute running time. The

WGC recommended that CTV should not be permitted to count the program as priority programming until the required Canadian content levels are met.

In its response, dated April 26, 2005, CTV asserted that *etalkDAILY* was indeed in compliance with CRTC regulations, stating “In accordance with the CRTC’s requirements for entertainment magazine programs, *etalkDAILY* devotes two-thirds of its running time to the promotion of Canadian entertainment, is an important tool in the effort to create Canadian stars and a bigger audience for Canadian entertainment, and qualifies as priority programming”.

While the CTV response listed examples of Canadian content stories aired on *etalkDAILY*, it did not provide any substantiated evidence or analysis of how the station is meeting the two-thirds Canadian content requirement. CTV provided a list of Canadian entertainment stories covered by past episodes of *etalkDAILY* but gave no evidence to counter the WGC’s findings, nor did it confirm that the listed Canadian stars and shows are getting more airtime than foreign stars and shows.

If CTV’s *etalkDAILY* does not comply with the two-thirds entertainment magazine requirement, that program should not qualify as a priority program. If it continues to be counted as a priority program nonetheless, CTV would be acting in breach of its condition of licence with respect to the broadcast of priority programming. This, in the WGC’s respectful submission, is unacceptable as *etalkDAILY* represents approximately 31% of CTV’s priority programming commitment.

Further, CTV’s response states that “Canadian artists reviewing foreign films and programming” and “foreign stars here on the Canadian scene” should consist of Canadian content for purposes of Canadian entertainment magazine shows qualifying as priority programming. In the WGC’s respectful submission, this proposed interpretation of Canadian entertainment magazine should be rejected outright as it is far too broad, is inconsistent with the current definition of entertainment magazine as well as the intent of the Television Policy, and does absolutely nothing to promote or support the Canadian entertainment sector.

Canadian entertainment magazine are defined as follows in Public Notice CRTC 1999-205:

“Programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) that devote at least two-thirds of their running time (excluding commercials) to the promotion of Canadian entertainment, including television programs, movies, soundtracks, plays, music, musical and performing arts events, performance artists and off-screen personnel associated with these activities and artists.”

While the definition provides a non-exhaustive list of content that may consist of Canadian entertainment programming, the essence of the definition is nonetheless to promote Canadian stories, entertainment events, Canadian films and television

programs and Canadian artists. The intent is clearly not to count content that gives air time to known Canadian figures who are promoting non-Canadian entertainment.

Surely, the Commission will agree that using a personality such as Ben Mulroney as a Canadian host is not enough to justify *etalkDAILY* as a priority program, particularly when Mr. Mulroney is promoting foreign fare – for example, interviewing foreign stars or promoting an acquired foreign television show. Under CTV's proposal, an episode of *etalkDAILY* in which Ben Mulroney promotes foreign feature films *Spider Man* and *Bat Man*, television programs *The Apprentice* and *Desperate Housewives* and musical bands U2 and the Rolling Stones – and nothing else - would count as a priority program. Surely, this was not the CRTC's intention when it developed the priority program rule and the definition of Canadian entertainment magazine programs.

The CTV response also discusses the WGC concern that Canadian music receives disproportionate coverage as compared to Canadian television or film projects by stating that "it's the responsibility of any entertainment magazine show to cover all aspects of popular culture." While we agree that the CRTC's definition can include some promotion of Canadian music on entertainment magazine programs, we do not believe that this was the reasoning behind the CRTC's policy change.

In Public Notice CRTC 1999-97, the CRTC stated that the reason for including entertainment magazine shows as priority programming was to familiarize Canadian audiences with Canadian television stars and shows. Since entertainment magazine shows are broadcast on television, they are the best vehicle that our industry has to promote Canadian films and television shows and their creators and stars. If however, these shows are used to promote foreign shows and stars rather than domestic ones, entertainment magazine programs are very ineffective tools to build a Canadian star system that can help convince audiences that indigenous programming is worth watching.

C. Global TV - *Inside Entertainment*

In the complaint filed with the Commission, the WGC presented research to demonstrate that Global TV's *Inside Entertainment* program was in breach of CRTC rules requiring that two-thirds of running time is dedicated to the promotion of Canadian entertainment. The WGC reported findings that the episodes reviewed contained an average of 4.4 minutes of Canadian content while the CRTC regulation requires that the broadcaster devote at least 16 minutes, or two-thirds of the show's 22 minute running time. The WGC recommended that Global should not be permitted to count the program as priority programming until the required Canadian content levels are met.

In its April 8, 2005 response, Global stated that while it understood our concerns regarding the eligibility of certain Canadian entertainment magazine programs, the network's *Inside Entertainment* program is logged as a "Canadian regionally

produced program,” since it is produced entirely in Calgary. Global stated that the show complies with the criteria for regionally produced priority programming and is not subject to the CRTC’s criteria for Canadian entertainment magazine programs.

The WGC is very concerned that the Television Policy allows broadcasters to count entertainment magazine programs with little or no Canadian content as priority programming because they come within the definition of a regional program. Clearly the practice of using programming practically void of Canadian content to fulfill conditions of licence, and masquerade these shows as Canadian entertainment shows, is contrary to the spirit of the CRTC policy intended to build a Canadian star system. This regulatory loophole must be closed to no longer allow broadcasters to evade promoting Canadian stars. The promotion of a domestic star system was one of the foundations of the Television Policy and broadcasters should not be permitted to exploit legal loopholes to air entertainment magazine programs that seek to build audiences for foreign, not Canadian, fare.

D. Toronto One - *The A-List*

The WGC’s original complaint filed with the Commission presented research to demonstrate that *The A-List program* is in breach of CRTC rules requiring that two-thirds of running time be dedicated to the promotion of Canadian entertainment. The WGC reported findings that the episodes reviewed contained an average of 4.1 minutes of Canadian content while the CRTC regulation requires that the broadcaster devote at least 16 minutes, or two-thirds of the show’s 22 minute running time. The WGC recommended that Toronto One should not be permitted to count the program as priority programming until the required Canadian content levels are met.

In an April 25, 2005 response, Quebecor, acknowledged that *The A-List* program does not devote two-thirds of its running time to the promotion of Canadian entertainment and therefore does not comply with the Commission’s policy. While the WGC does not concur with some of the reasons for the situation of non-compliance, including the broadcaster’s claim that “there is a shortage of enough content of a reasonable standard, and opportunities to interview the people involved,” and that the station lacks sufficient revenue to fund a Canadian content program, the WGC is encouraged with Quebecor’s assurance that “starting from Fall 2005, Toronto One’s programming will be entirely in line with the regulatory framework.”

However, Toronto One should be in compliance with set Canadian priority programming and content requirements at all times. If the network is currently unable to meet set requirements with *The A-List* program, it should broadcast alternative Canadian priority programming to meet its CRTC licence terms.

E. WGC Request

In light of the above, the WGC hereby formally requests that the CRTC conduct an official investigation of this situation.

The WGC asks that the Commission conduct an investigation of CTV's *etalkDAILY*, and Toronto One's *The A-List* entertainment magazine programs, to formally review their compliance with set CRTC priority programming requirements.

If the Commission finds that CTV and Toronto One are breach of the two-thirds Canadian content requirement for entertainment magazines for *etalkDAILY* and *The A-List*, we further request that the Commission issue a decision requiring CTV and Quebecor/Toronto One to either comply immediately with the two-thirds entertainment magazine requirement, or broadcast alternate priority programs. That decision should also require CTV and Quebecor to broadcast additional hours of priority programs to make up for any lost hours of priority programs that were improperly reported since its last licence renewal in the case of CTV, and since the acquisition date of Toronto One in the case of Quebecor.

If the Commission issues decisions requiring CTV and Quebecor to comply with the priority programming requirements of their respective licences but the broadcasters fail to do so, the WGC urges the Commission to require these broadcasters to appear at a hearing and show cause why a mandatory order requiring the licensees to conform to their priority programming conditions of licence should not be issued pursuant to section 12 of the *Broadcasting Act*.

The Commission should also review its priority programming rule with respect to regional magazine programs in order to ensure that such programs devote at least two-thirds of their running time to the promotion of Canadian entertainment. As discussed above, as the rule currently stands, broadcasters may count entertainment magazine programs that contain very little footage promoting Canadian entertainment, where they are produced outside of Toronto, Montreal and Vancouver as priority programs because of the regional nature of the program.

The Commission should also review the priority programming rule to ensure that entertainment magazines that count as priority programs reflect a broad range of Canadian entertainment subjects including films and television programs and their artistic and creative talent. This will avoid an over-representation of musical artists on entertainment magazine programs. It will also ensure that the shows help build audiences for Canadian television programming and films and help make stars out of Canadian screenwriters, directors and performers.

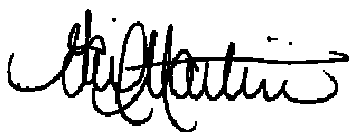
This request for the Commission to undertake a program review is consistent with other cases where a complaint was filed with the CRTC that raised compliance issues. A recent example is the complaint filed by CHUM Limited with respect to the operation of MTV Canada (see Decision CRTC 2003-65 and CRTC Letter Decision dated April 6, 2004).

Another example where the Commission conducted an in-depth review of programming consists of a complaint filed by Standard Radio Inc. with respect to the manner in which Corus operated two radio stations in Ontario (see CRTC Letter Decision Dated March 11, 2004). Finally, the Commission also conducted a detailed review subsequent to the filing of a complaint by Standard Radio Inc. concerning the operation of two radio stations by Rogers in Ontario and B.C. (see Decision CRTC 2001-257).

The WGC submits that it is in the public interest for the Commission to undertake a timely review to ensure that Canadian entertainment magazine shows are meeting their priority programming requirements. Many hours of priority programming may be lost to the system if the Commission does not conduct a formal review as soon as it is practicable to do so.

We thank you for this opportunity to provide you with our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gail Martiri". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gail Martiri
Director of Policy
Writers Guild of Canada

cc: Charles Dalfen, Chair, CRTC
Marc O' Sullivan, Executive Director, CRTC
Nick Ketchum, Director, English-language Radio and TV, CRTC
Maureen Parker, Executive Director, Writers Guild of Canada