Writers Guild of Canada

December 16, 2016 **Filed Electronically**

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. May-Cuconato:

Re: Broadcasting Notice of Consultation CRTC 2016-225 – Renewal of television licences held by large English- and French-language ownership groups; Application Numbers 2016-0012-2, 2016-0015-6, and 2016-0009-9

Final Submission — Intervention — Gatineau Hearing

1. The Writers Guild of Canada (WGC) is the national association representing more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. We are pleased to submit final written comments in this proceeding.

CPE and PNI Levels

2. In 2009, the Commission looked at the television policy framework then in place and found that it wasn't working. Private, English-language broadcasters were under-investing in Canadian programming and pushing the results to the shoulder periods of their schedules. As such, the Commission implemented the 2010 Group Policy[1] which placed emphasis on expenditure requirements for Canadian programming. This was a step in the right direction, but the Commission's approach pegged expenditure requirements to revenues, and set expenditure levels based on the broadcasters' historical activity over the previous three years. This meant that expenditure requirements were calibrated to broadcasters' under-investment levels during the previous policy. In addition, the three benchmark years spanned the depths of the 2008 global recession, further lowering the requirements. In our initial written submission, we referred to this as a "double whammy". The Commission in 2011 clearly expected "a greater overall contribution to Canadian programming" as broadcasting revenues grew. But the Commission did not fully anticipate the

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

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challenges that would soon face the broadcasting system generally, and conventional TV in particular. So, instead of growth we saw declines in both revenue and Canadian programming expenditures.[2]

3. Now, broadcasters propose reductions of the percentages on which Canadian programming expenditures (CPE) and expenditures on programs of national interest (PNI) are based. Given that broadcasting revenues are expected to decline further, the result would be yet another "double whammy" for the production of Canadian programming. As such, Canadian content production today essentially faces a "quadruple whammy" from the combined effects of the 2010 CPE and PNI formulas, and the broadcasters' proposals to further reduce percentages in the face of declining revenues. The WGC accepts the Commission's decisions of 2010, and we all must accept the challenges to broadcasting revenue growth. But we do not, and cannot, accept broadcasters' attempts to further reduce spending on Canadian programming by lowering CPE and PNI percentages themselves.

4. It is worth emphasizing the sheer impact of the broadcasters' proposals. As estimated by Boon Dog Professional Services Inc., in the joint report appended to our initial written submission in this proceeding, (the Boon Dog Report) if the 5% PNI level Bell Media Inc. (Bell) proposes were to apply for the current broadcast year (2015-2016) using 2014-2015 revenues for the proposed new Bell group, actual required PNI would have been $17.5 million less (or 21% lower) than would otherwise have been required under existing PNI levels. Further, If the 5% PNI level Corus Entertainment Inc. (Corus) proposes were to apply for the current broadcast year (2015-2016) using 2014-2015 revenues for the services in the proposed new 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, and if this were multiplied by a 5-year term,[3] this results in a loss of over $200 million over the licence term *for PNI alone.* In the WGC's view, 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.

5. It is also worth emphasizing that the WGC's suggested CPE and PNI levels for each group, as set out in the Boon Dog Report, does not represent an increase in spending in the system, but simply a recalculation of each group based on changes in group composition. Most notably, since the previous group spending requirement calculation, the Bell group has acquired The Movie Network and Corus has acquired TELETOON and the assets of Shaw Media, among other changes. These changes in group composition naturally impact the spending requirements of each group, and cannot do otherwise under the Group Policy as established and implemented by the Commission.

6. At the hearing, Commissioner Vennard asked the WGC to clarify its position with respect to standardization. We would like to add to the response we provided at the hearing. When the WGC said in its initial written submission that it does not object to standardization, we were referring to a general philosophy of treating like entities similarly. This was in the spirit of recognizing that the Create Policy[4] has moved the needle towards standardization, largely with the removal of genre exclusivity. However, there is a difference between standardization and a race to the bottom. What

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[2] See the WGC's initial written submission in this proceeding, August 15, 2016, paras. 22-32.

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

[4] Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming*, 12 March 2015

Bell and Corus propose is not standardization, but a lowest-common-denominator approach that seeks to reduce CPE and PNI requirements in the guise of "parity". We object strenuously to such an approach. If the Commission were truly committed to standardization as between broadcast groups, it could determine an industry average CPE and PNI, as between Bell, Corus, and Rogers Media Inc. (Rogers), and apply that average to all groups. Given their respective histories and asset mixes, this would inevitably result in lower PNI requirements for Bell and Corus, and a higher PNI requirement for Rogers. While the WGC would not be philosophically opposed to this, we are sensitive to the impact it would have on Rogers, and question why Bell and Corus, which by their own acknowledgement operate services with a particular set of brands and related programming strategies, should obtain a PNI reduction in this manner. As such, with respect to PNI, the WGC supports requirements calculated by the historical spending of each group, based on their group composition as ultimately approved by the Commission. Our calculation of these levels, based on the data that is publicly available during this proceeding, and subject to the Commission's own calculations based on complete data, would result in a group PNI level of 8% for Bell, 9% for Corus, and 5% for Rogers.[5] These are status-quo numbers. Anything less would be a reduction of support for Canadian programs of national interest.

New Commissioned/Original, First-Run Programming

7. The Commission has stated that it is "of the view that original first-run Canadian productions add more value to the system,"[6] and that:

> The Canadian broadcasting system will succeed or fail to the degree that Canadian creative talent, producers, broadcasters and distributors provide a quality Canadian television experience for the viewer. At the heart of this experience is the ability of the system to <u>continually create attractive new Canadian programs</u>.[7] [Emphasis added]

8. The WGC agrees. However, during the hearing, the question of just how to define and describe spending on new production was subject to some debate. In particular, it became clear that not all broadcasters report spending on new production the same way, and amortization of programming under the accrual accounting method plays a role in how broadcasters report this spending.[8]

9. Having listened to the broadcasters' comments in this proceeding, and examined their submissions and undertakings, the WGC has modified its views on this issue somewhat from those we expressed

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[5] To be clear, these numbers take into account the removal of revenue from the Local Programming Improvement Fund (LPIF) from the calculations for each group, which was inadvertently not done in the Boon Dog Report. They also take into account the generally higher revised PNI spending numbers filed by Corus in this proceeding in October, hence the increase to 9% from the 8% average historical PNI spend level found in the Boon Dog Report. Also, it is important to reiterate the point made in the Boon Dog Report that the historical average PNI spending levels (8%, 9%, and 5% respectively) for each group were necessarily arrived at differently. That's because the PNI spending data for the current licence term filed by Bell in this proceeding are based on its *proposed* new group for the next licence term (i.e., assuming that the Bell Media English Group existed beginning in 2011-2012), whereas the PNI spending data for the current licence term filed by Corus (including Shaw Media) and Rogers are based on their respective *existing* designated groups (i.e., no historical PNI spending data are available for ABC Spark, BC News 1, and NatGeoWild for Corus, and FX and FXX for Rogers).
[6] Create Policy, para. 191.
[7] Group Policy, para. 7.
[8] See the WGC's initial written submission in this proceeding, August 15, 2016, paras.65-66.

in our initial written submission in this proceeding. We still believe that it's important for the Commission to effectively measure and monitor the degree to which CPE and PNI spending is directed to new production, as opposed to library content. Given the complexities involved, however, particularly with respect to amortization, we would now like to propose both a principles-based approach to this issue, and a specific approach on how new spending could be measured.

10. It appears that one of the challenges on this subject lies in adapting concepts that were devised in the context of program *exhibition* to the context of program *expenditures*. For example, the concept of "original, first-run" programming appears to have related primarily to describing how and when a program was telecast,[9] whereas we are now seeking to understand how broadcaster *spending* on such programming should be considered. In this context, it seems appropriate to divide this issue into two questions: 1) How is "original, first-run" and/or "new commissioned" programming defined; and, 2) How is spending on such programming reported?

11. With respect to the first question—how is "original, first-run" or "new commissioned" defined—we note that the Canadian Media Producers Association (CMPA) and the Directors Guild of Canada (DGC) have proposed in their response to undertakings a definition consistent with that in Schedule 1 of the new proposed *Discretionary Services Regulations*.[10] The WGC does not object to this definition.

12. With respect to the second question—how spending on "original, first-run"/"new commissioned" programming should be reported—we believe that any such system should follow two key principles. Firstly, the reported spending should allow the Commission and the public to effectively understand what proportion of broadcasters' CPE and PNI spending is being directed to the production of new Canadian programming, as opposed to the purchase of existing Canadian "library" content. Secondly, the reported spending should allow the Commission and the public to effectively compare broadcasters and designated groups against each other in this respect. Ultimately, we believe the Commission and stakeholders should be able to understand how broadcast groups are meeting their CPE and PNI requirements with respect to new production, how they are performing over time, and how they compare with the other broadcasters and designated groups. This will allow the Commission to determine whether a Condition of Licence on spending on new production is necessary and, if so, the level of new spending at which that Condition of Licence should be set.

13. Having reviewed the evidence on the public record of this proceeding, we acknowledge the challenges with respect to program amortization, particularly as discussed by Corus in their Response to undertakings, December 9th, 2016, at paragraphs 94-97. In particular, we recognize that program amortization schedules may differ not only as between designated groups, but as between types of programming within each group. As such, as a modification of the view we took in our initial written submission in this proceeding, we would propose that the Commission require broadcasters to report spending on new production on an amortized basis, but without regard to the amortization schedule in particular.

14. Allow us to explain. For example, consider a hypothetical Canadian television production, which we'll call "Program A". Program A receives a licence fee from "Broadcaster X" of $1 million, in exchange for

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[9] E.g. The definition of "original, first-run" at Schedule 1 of Broadcasting Notice of Consultation CRTC 2016-385, *Call for comments on Discretionary Services Regulations*, 26 September 2016, is used in the context of programming logs, and falls under the heading "Exhibition" in Schedule 1.
[10] *Ibid.*

a broadcast licence with a term of 5 years. According to Broadcaster X's amortization schedule, Program A is amortized in equal amounts of $200,000 over that 5-year term. Under what we understand to be Corus's approach to reporting new production spending, only the first year's amortization of $200,000 is counted as spending on "new" production, with the remaining $800,000 (i.e. $200,000 x 4 years) *not* being counted as "new". In reality, the entire $1 million licence fee would be commonly understood as spending on "new production", since the entire $1 million was provided as a licence fee to commission and finance a new television program. But by counting only the first year's amortization, the reported number has been "artificially" lowered. Further, if a different broadcaster—Broadcaster Y—also provides a $1 million licence fee to a different program—Program B—but Broadcaster Y front-loads the amortization schedule to "reflect the pattern in which the asset's future economic benefits are expected to be consumed"[11] in a different manner than Program A—for instance by assigning 50% of the value of the licence fee to the first year of the licence term—and Broadcaster Y also counts only the first year's amortization in spending, then Broadcaster Y is reporting $500,000 on new production. As such, in the above examples, Broadcaster X reports $200,000 in spending on new production, and Broadcaster Y reports $500,000 in spending on new production, yet both broadcasters have in fact spent identical amounts to commission a new Canadian program—i.e. $1 million. It seems far preferable that reporting on new production allow the Commission and the public to recognize the reality of the $1 million investment in new Canadian programming production, rather than see only what has been amortized in the first year of an amortization schedule.

15. Given this outcome, the WGC would propose eliminating the impact of the amortization schedule for the purposes of reporting spending on new production. In our proposal, broadcasters would still amortize production spending as they currently do, under whatever amortization schedule they currently apply. However, rather than only counting the first year's amortization as spending on "original, first-run" or "new commissioned" production, broadcasters would count all spending on such production, however amortized. In the above example, for Program A, Broadcast X would report $200,000 as spending on new production in the first year of amortization, $200,000 as spending on new production in the second year, and so on, in each year of the licence term, until the full $1 million amount was amortized. Similarly, for Program B, Broadcaster Y would report $500,000 as spending on new production in the first year of amortization, a lesser amount as spending on new production in the second year, and so on, in each year of the licence term, until the full $1 million amount was amortized. In both cases, $1 million would be reported as spending on new production, regardless of the amortization schedules used. (Indeed, other broadcast groups, such as Bell, may already be doing this, since they also amortize production costs but report much higher spending on original, first-run/new commission production than Corus.) Assuming that each broadcaster maintains the same approach over time, the differences in amortization schedules should even out over the medium-to-long term. And while this approach would necessarily result in amortization amounts for later years counting as spending on new production, even when the production itself was aired years before, this is: 1) unavoidable, given the nature of amortization itself; 2) consistent with how CPE and PNI in general are reported in an accrual system; and 3) reflective of what broadcasters are actually spending on new production, since the spending was on a new production when the cash outlay was made.

16. The WGC recognizes that this is a complex issue, and it is possible that despite our attempt at clarification, questions may remain on the part of broadcasters, the Commission, and/or other

[11] Response to undertakings made at oral phase of the hearing by Corus Entertainment Inc., December 9, 2016, para. 94.

industry stakeholders. As such, the Commission may also wish to consider convening a working group, consisting of representatives from the Commission and the industry, including representatives from the production community, to work through these issues and to arrive at a mutually beneficial approach. The WGC would be pleased to participate in such a working group.

17. Finally, having reviewed the submissions and the undertaking of our colleagues at the DGC, we must respectfully disagree with their proposal to set "75% of 75%" of PNI, or 56% of PNI overall, as the minimum spending amount on original, first-run/new commissioned programming. Without properly understanding what the real levels of spending on new production are now, we believe it is premature to set a specific minimum spending requirement. Further, our impression is that broadcasters are currently devoting well above 56% of their actual PNI spending to new Canadian production. As such, we suspect that 56% is far too low to effectively maintain or improve upon current expenditures on new Canadian programming.

Script and Concept Development

18. The Commission noted the importance of script and concept development in the Create Policy,[12] included the issue in the Notice of Consultation in this proceeding, and raised it with licensees during the application process earlier this year when it asked them about their plans and activities regarding development. At the public hearing, the Chair discussed our concerns about development and included the issue in his questions to all three designated groups in the final phase of the hearing on December 1. The WGC was pleased to see the Chair and the Commission devote time and emphasis to this issue, and we strongly believe that greater emphasis on development in the Canadian broadcasting system will result in better quality Canadian programming for Canadian audiences.

19. In our initial written submission in this proceeding, the WGC proposed a two-step approach to strengthening development: 1) Obtain and make public accurate and detailed data on how broadcasters are investing in script and concept development; and, 2) Use that data to establish minimum development spending obligations by the designated groups. While we were very pleased that the Commission sought to inform the public record by asking broadcasters to undertake to provide better and additional development data, after our review of those undertakings we find ourselves still stuck at the first step.

20. As we stated at the public hearing,[13] in the Aggregated Annual Returns[14] on page "ii"—Direct Operating Expenses—Line 10 appears to show script and concept development spending for programs that were *not* telecast, and Line 23 appears to show program development spending for programs that *were* telecast, so that adding Lines 10 and 23 should represent the total development spending by the reporting entity. But taken at face value, these numbers appeared quite low to us, and Rogers in particular reported $0 of spending in these categories, leading us to believe that the information was not being properly reported on these forms. In the final phase of the oral hearing, the Chair asked each designated group to undertake to provide this information, in particular as it related to the WGC's definition of script and concept development, namely, writing activity.

[12] Para. 122.

[13] Transcript, Hearing November 30, 2016, para. 4831.

[14] http://www.crtc.gc.ca/eng/stats6.htm

21. Having reviewed the broadcasters' responses, however, we feel we are not much closer to understanding their current development spending. Both Bell and Corus, for example, appear to have provided data and analysis with respect to script and concept development spending for programs *not* telecast (Line 10), but have not provided data for development spending for programs that *were* telecast (Line 23). Corus states:

> In completing our CRTC Annual Returns, the script and concept development costs reported on line 10 of Form 1230, represent the costs that have been expensed in the period because it was determined that the program/project would not likely be pursued for further development. However, this does not reflect all of the development activities of the broadcaster because development costs for programs that are subsequently developed, become part of the program licence asset. The total capitalized costs of the program asset (including development and program licence fee) are then amortized per our accounting policies (see response to question 2 of Exhibit 3 and Corus response to transcript reference line 6518 above for more details on amortization practices). The amortized amounts then appear in the Canadian programming telecast expenses in lines 1 through 7 of Form 1230.[15]

22. But it is the WGC's understanding that development spending for programs that were telecast should not be simply "buried" in Lines 1-7—they should be broken out and reported at Line 23. Indeed, the form itself states that Lines 21-24 (and, presumably, Lines 25-29 as well) represent "Amounts included in total Canadian programs telecast…". It seems very clear to us that these lines are for additional detail of expenses reported in Lines 1-7. Corus goes on to state:

> Therefore, mandating a certain amount, percentage of revenue, or percentage of PNI to be directed strictly to funding script and concept development that would appear on line 10 of Form 1230 would be mandating spending on unsuccessful projects that do not get to telecast. We believe this is not the intent or in the interest of the Commission, broadcast licensees, or the Writer's Guild of Canada.[16]

23. Corus is correct—this is not our intent. Our intent is to obtain complete and correct information on all script and concept development spending, both telecast and not telecast, which we understand should be provided by broadcasters accurately filling out both Lines 10 and 23 on the Aggregate Annual Returns, page ii. Corus has claimed confidentiality on the development data that it provided pursuant to its undertaking,[17] which further frustrates our ability to comment.

24. Bell Media, in its response to undertakings, provides a table which purports to show "the amounts for Canadian script and concept development expenses as reported on the aggregate annual returns for over-the-air and English Specialty and Pay".[18] However, the numbers in this table appear to correspond to Line 10 only of the Aggregated Annual Returns. As such, we question whether Bell has the same misunderstanding that we believe Corus holds with respect to Line 23.

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[15] Response to undertakings made at oral phase of the hearing by Corus Entertainment Inc., December 9, 2016, para. 110.
[16] *Supra,* para. 111.
[17] *Supra,* paras. 113-116, Appendix E.
[18] Response to undertakings made at oral phase of the hearing by Bell Media Inc., December 9, 2016, para. A12.

25. Rogers Media, in its response to undertakings, provides data that is difficult to interpret because it does not specify whether it encompasses programs telecast, programs not telecast, or both. Further, Rogers includes data on development funding from the Canada Media Fund (CMF), which appears odd because CMF funding does not count as CPE or PNI spending under the Commission's policies.[19]

26. Ultimately, none of the three broadcast groups submitted revised Aggregated Annual Returns, with Lines 10 and 23 accurately and completely filled in. In addition, none of the three groups provided additional information on writing versus non-writing costs in development, notwithstanding that the WGC highlighted this distinction in our definition of development,[20] and the Chair expressly asked each group to provide information consistent with the WGC's definition.[21]

27. As such, the WGC is not in a position to effectively assess broadcaster spending on script and concept development now, nor can we provide a proposal for a specific minimum level of spending on development. Nevertheless, we continue to believe that script and concept development is a crucial component to producing high-quality Canadian programming that can be successful both with Canadian audiences and internationally. We continue to be concerned that broadcasters are under-investing in development, which increases the financial burden on screenwriters and reduces the quality of the resulting programming, to the detriment of Canadian viewers and the potential for international success. As such, we ask that the Commission continue to require that broadcasters provide accurate and complete development spending data and that, once obtained, the Commission impose upon each group, as a condition of licence, minimum spending on script and concept development that maintains or, preferably, improves upon that level of spending.

Data & Reporting Issues

28. Further to the issues we have raised regarding the incompleteness and inaccuracy of the data filed annually by the broadcast groups related to their spending on script and concept development, the WGC notes that a number of additional issues have arisen during the course of this licence renewal proceeding with respect to the accuracy and quality of the data generally filed by the broadcast groups (particularly Corus) in the various reports they are required to file with the Commission annually.

29. As we have mentioned in the past, having access to relevant, accurate, and reliable television broadcast group spending data on CPE and PNI is crucial to industry stakeholders such as the WGC, as it allows us to monitor the impact of the Commission's policies on our members and on the broadcasting system as a whole. This information is a critical link between Commission policies and the outcomes of those policies, and as such we feel that there is a vital public interest in its detail, accuracy, and public availability. Accordingly, we urge the Commission to make reporting regarding broadcasters' spending on CPE and PNI, specifically with respect to its quality, accuracy, and relevance, a priority outcome of this licence renewal proceeding.

30. To assist the Commission in this regard, we offer the following guiding principles regarding reporting:

- Each broadcast group should be required to file separate group PNI reports and separate Aggregated Annual Returns with the Commission for each language group. To be clear, Bell Media,

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[19] Group Policy, paras. 59-60.
[20] Transcript, Hearing November 30, 2016, paras.4904, 4906.
[21] Transcript, Hearing December 1, 2016, paras. 6260-6262, 6545-6546, and 6818-6823.

for example, should be required to file one group PNI report for its English-language designated group and one group PNI report for its French-language designated group. Similarly, it should be required to file separate pay and specialty TV Aggregated Annual Returns for its English-language designated group and its French-language designated group. We raise this issue because the Commission has permitted BCE to file combined group PNI reports for the existing Bell Media and Astral Media designated groups during the current licence term, despite the fact that they are licensed by the Commission as separate designated groups with unique CPE and PNI requirements.

- Consistent with the principle above, the Commission should report PNI spending data by the broadcast groups separately according to language groups in future *Communications Monitoring Reports* (see Table 4.2.18 of the 2016 report).

- Should the Commission continue to allow TELETOON/TÉLÉTOON to be licensed as a bilingual discretionary service, Corus should be required to disclose revenue and spending data by language for this service on an annual basis. If data for TELETOON/TÉLÉTOON is included in Corus' English-language group PNI reports and Corus' English-language Aggregated Annual Returns, industry stakeholders will not have an accurate picture of revenue and spending by language (and by program category) for the Corus English-language group. If Corus wishes to continue to have TELETOON/TÉLÉTOON licensed as a bilingual service, it must waive its usual claim for confidentiality of reporting for this service.

- Spending on "original, first-run" or "new commissioned" CPE and PNI, however it is ultimately defined by the Commission, should be incorporated into the Aggregated Annual Returns filed by the broadcast groups so that spending data are available by program category.

- On the issue of Corus's reporting in accordance with practices related to vertically integrated (VI) entities, as described in Corus's response to undertakings,[22] the WGC believes that Corus should be treated similar to Bell and Rogers in this respect, and supports the Commission's suggestion that Corus should be treated like a VI entity in this respect.

Conclusion

31. The WGC is pleased to provide comments in this proceeding, and thanks the Commission for the opportunity to do so.

Yours very truly,

Maureen Parker
Executive Director

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[22] Response to undertakings made at oral phase of the hearing by Corus Entertainment Inc., December 9, 2016, paras. 50-59.

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