Writers Guild of Canada

June 6, 2014 **Filed Electronically**

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

Dear Mr. Traversy:

**Re: Application 2014-0383-1**

**By Allarco Entertainment 2008 Inc.: Amendment of a condition of licence, Super Channel**

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. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system.

**<u>Amendment to condition of licence 8</u>**

2. In the above-noted application, Allarco Entertainment 2008 Inc. (Allarco) is seeking an amendment to condition of licence (COL) 8, as set forth in Appendix 1 to Broadcasting Decision CRTC 2013-468, which states:

> In addition to the expenditures required under conditions of licence 5, 6 and 7, the licensee shall expend as payment of the shortfall on its expenditures on regional outreach programs an amount equal to $500,000 and $1 million, respectively, on script and concept development in each broadcast year until the end of the current licence term which expires on 31 August 2017. The total amount to be paid equals $6 million.

3. Allarco proposes that the following be added after the last sentence of this COL:

> The expenditures made pursuant to this condition of licence 8, for each of the broadcast years 2014-2015, 2015-2016 and 2016-2017 shall be attributable to the Canadian programming expenditures, required pursuant to condition of licence 5.

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4. As the WGC understands this request, Allarco's proposed amendment would essentially undo at the end of COL 8 the requirement established at the beginning of the COL. COL 8 clearly states that the expenditures required therein are *in addition to* the expenditures required in COLs 5, 6 and 7. To have the expenditures of COL 8 count as expenditures under COL 5 would defeat the purpose of COL 8. Alternatively, it would result in a self-contradictory circular logic that would render the COL ambiguous, if not meaningless.

5. We believe that the Commission was clear in Broadcasting Decision CRTC 2013-468 (the Decision) with respect to this COL. In that Decision, issued less than a year ago, the Commission had the opportunity to consider Allarco's request to reduce its expenditure requirements. In the Decision, the Commission noted that "Allarco was licensed to operate a national pay television service as a result of a competitive licensing process and that the conditions of licence that Allarco proposed to amend were an important factor in the licensing of Super Channel."[1] The Commission found that Allarco "failed to meet its obligations for the 2008-2009 to 2011-2012 broadcast years, over which time the licensee accumulated a significant shortfall,"[2] and it was this shortfall that the $6 million expenditure described in COL 8 was intended to address[3]. The WGC submits that it is clear in both the Decision and COL 8 that the $6 million expenditure on regional outreach, and script and concept development, is intended to be in addition to the expenditures under COLs 5, 6 and 7. We submit that accepting Allarco's proposed amendment to COL 8 would effectively reverse that decision.

6. The WGC also notes that the Commission has already granted Allarco relief on certain expenditure requirements in the 2013 Decision. The Commission stated:

> However, given that Super Channel will continue to contribute to the creation of new Canadian programs and to the creative sector, though to a lesser extent, and maintain an independent voice in the pay television sector, the Commission approves the licensee's request that Super Channel be granted a reduction in its requirements relating to regional outreach and script and concept development.

7. The WGC considers that this reduction was significant, decreasing the requirements of each by 50% and allowing the requirements to count towards overall CPE, rather than to be in addition to CPE.[4] The WGC is disappointed that Allarco is requesting further reductions only 8 months after the Decision, and notes the burden that multiple applications for effectively the same relief over a short period of time places on small organizations such as the WGC, which must monitor and respond to each request.

8. The WGC also submits that Allarco has provided no new or compelling evidence that a further reduction in its spending obligations is warranted. In its application, Allarco points to structural matters—such as the fact that Super Channel is not part of a vertically integrated broadcast group and does not have the same requirements as those subject to *A group-based approach to the licensing of private television services*[5], and the presence of over-the-top competitors like Netflix—even though these factors were present when the Commission's 2013 Decision renewing Super Channel's licence was made. Accordingly, there is no reason to revisit the Decision made just 8 months ago.

9. For these reasons the WGC opposes Allarco's request. We submit that Allarco should not be permitted to further reduce its overall expenditure requirements beyond what was already permitted in its 2013 licence renewal.

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[1] Paragraph 17
[2] Paragraph 18
[3] Paragraphs 21-22
[4] Broadcasting Decision CRTC 2006-193, Appendix, COLs 5 and 8
[5] Broadcasting Regulatory Policy CRTC 2010-167

10. We thank the Commission for the opportunity to provide our comments related to this application.

Yours very truly,

Maureen Parker
Executive Director

c.c.: National Council, WGC
Mark Lewis, Partner, Lewis Birnberg Hanet, LLP (mlewis@lbhmedialaw.com)

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