Writers Guild of Canada

March 27, 2018 **Filed Electronically**

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

Dear Mr. Seidl:

Re: Application 2017-0743-1: Broadcasting licence renewal for Super Channel (formerly Allarco Entertainment)

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.

The WGC **conditionally supports** the renewal of the above-noted service, subject to our comments below.

Introduction and Executive Summary

1. In this application, Allarco Entertainment 2008 Inc., the general partner, as well as limited partner, with C.R.A. Investments Ltd., carrying on business as Allarco Entertainment Limited Partnership (Allarco), is seeking to renew the broadcasting licence for the discretionary programming undertaking Super Channel, as a national English-language general interest pay television discretionary service. Super Channel has had a troubled history since it was first licensed in 2006, in the course of which Allarco has repeatedly sought, and in a number of cases received, substantial relief from the regulatory commitments it made in its initial licence application. In this renewal proceeding, Allarco proposes, among other things, to reduce the Canadian programming expenditure (CPE) minimum spending requirement for Super Channel from 30% of its revenue for the previous broadcast year to 25%, to eliminate the current condition of licence (COL) with respect to spending on script and concept development, and to be renewed for a licence term of five years.

2. The WGC opposes the reduction of Super Channel's CPE, and submits that it should be maintained at 30% of revenues of the previous broadcast year. This is consistent with Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming* (the Create Policy). Allarco cites a number of factors to support this request, which the WGC submits were already in existence when the Commission set a 30% CPE for Super Channel in

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2013, have already been dealt with by the Commission, or involve questions of carriage that are better dealt with as carriage matters not Canadian programming matters. The WGC submits that the Commission should not rely on Allarco's financial projections for Super Channel, which the WGC believes are overly optimistic and mask the potential negative impacts of a lower CPE percentage.

3. The WGC submits that Super Channel should be made subject to a minimum spending requirement on programs of national interest (PNI). PNI has not been limited to large broadcasting groups, and currently independent services and "mini-groups", such as Family Channel, and the services of Blue Ant Media Inc., have PNI requirements. Allarco itself has suggested a need for greater parity with the COLs of comparable services, which should include PNI. As a general interest pay television discretionary service, which historically commissions and airs dramatic feature films, series, and feature documentaries, it is entirely consistent for Super Channel to expend resources on PNI. The WGC submits that PNI levels should be based on Super Channel's historical spending on PNI.

4. The WGC is disappointed that Allarco is seeking to eliminate Super Channel's COL with respect to script and concept development, while making no specific commitment to ensure that Super Channel continues to achieve this objective. This is especially disappointing given the importance of development, as argued by the WGC and recognized by the Minister of Canadian Heritage, the Hon. Mélanie Joly, in the "Creative Canada" policy framework. This COL was an important factor in the Commission's decision to first licence Super Channel, yet it was not met in Super Channel's first licence term and was then substantially reduced in its second term. We submit that Super Channel should not be permitted now to simply walk away from script and concept development and, as such, submit that the current COL be retained. If, however, the Commission does eliminate this COL, it will become even more important to impose a PNI requirement on Super Channel, because while PNI alone won't replace dedicated funding for development, it may at least help partially offset the negative impacts.

5. Our review of the most recent Statistical and Financial Summaries reveals that the line for "Script & Concept" shows $0 in spending for each of the five years reported on. Given that Super Channel's COLs require the licensee to "expend on script and concept development…at least $500,000 in each broadcast year," we would expect to see at least this amount recorded in this cell for each applicable year, yet no spending is recorded. As such, we can only conclude that there has been some sort of reporting error in this regard, and/or that Super Channel is in non-compliance with respect to this COL. Further, in Broadcasting Decision CRTC 2013-468, the Commission imposed an annual reporting requirement on script and concept development spending (and regional outreach), but the reports posted on the Commission's website with respect to script and concept development indicate apparent non-compliance for 2016 and 2017.

6. The WGC opposes Allarco's request to be granted a five-year licence term. Given the significance and duration of the financial difficulty that Super Channel has experienced, as well as the repeated non-compliance and apparent non-compliance with its COLs in the past, combined with the fact that Super Channel is, to our knowledge, still under *Companies' Creditors Arrangement Act* (CCAA) protection, we submit that a shorter term, of no longer than three (3) years, will better allow the Commission to monitor the outcomes of this renewal, and to review Super Channel's conditions again in the near future. This would be especially appropriate if the Commission deems to grant Allarco any degree of regulatory relief as a result of Super Channel's current financial challenges.

History and Background of Super Channel

7. As the Commission is aware, Super Channel has had a troubled history since it was first licensed in 2006, in the course of which Allarco has repeatedly sought, and in a number of cases received, relief from the regulatory commitments it made in its initial licence application.

8. Super Channel was initially licensed pursuant to Broadcasting Decision CRTC 2006-193, which was a competitive process in which the Commission denied the competing applications by three other parties in favour of that of Allarco. As then stated by the Commission:

> The applicant also proposed to spend $4 million in the first year of operations, and 32% of the previous year's gross revenues in each subsequent year, on Canadian programming. Above and beyond this commitment, Allarco proposed to expend not less than $2 million each broadcast year, excluding overhead costs, on script and concept development, for a total of $14 million over the licence term.[1]

9. With respect to regional production, Allarco indicated that it would allocate an additional $7 million over the licence term for regional outreach. The Commission accepted these commitments and codified them as COLs for Super Channel. In its 2013 licence renewal proceeding, however, Allarco made requests to amend these COLs, stating that it had experienced financial challenges since it began operating and that it had accumulated a significant deficit over the current licence term.[2] The Commission expressed its disappointment with Allarco, noting that it was licensed as a result of a competitive process and that the conditions of licence that Allarco proposed to amend were an important factor in granting Super Channel a licence. The Commission found Allarco failed to meet its obligations for the 2008-2009 to 2011-2012 broadcast years, over which time it had accumulated a significant shortfall, and noted it was the Commission's standard practice to deny applications seeking to amend conditions of licence for which the licensee is in a situation of non-compliance. However, the Commission stated its hope that Super Channel would 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. As such, the Commission approved a reduction in its requirements relating to regional outreach and script and concept development, for the latter from $2 million in addition to its CPE requirements, to $500,000 as part of its CPE requirements.[3] The Commission was of the view that Allarco should be required to pay a portion of the shortfall, however, and as such directed the licensee to pay $6 million over the next licence term, *in addition* to the required expenditures on regional outreach programs and script and concept development for the next licence term.[4] With respect to CPE, the Commission imposed a 30% CPE requirement on Super Channel.[5]

10. Less than one year after issuing these determinations, Allarco applied to effectively eliminate its $6 million repayment, by seeking to amend the applicable COL so that the repayment would form part of Super Channel's ongoing CPE obligations. Allarco cited factors similar, if not identical, to those it

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[1] Broadcasting Decision CRTC 2006-193, para. 16.
[2] Broadcasting Decision CRTC 2013-468, para. 15.
[3] Broadcasting Decision CRTC 2013-468, paras. 17-21.
[4] Broadcasting Decision CRTC 2013-468, paras. 21-22.
[5] Broadcasting Decision CRTC 2013-468, paras. 26-27.

now cites in the present application.[6] The WGC submitted comments opposing Allarco's 2014 amendment application, and the Commission ultimately denied Allarco's request.[7]

11. While it is unfortunate that Super Channel has experienced the difficulties that it has, the WGC agrees with the Commission's repeated assertion that the service was licensed in 2006 pursuant to a competitive process, in which Allarco's proposed COLs were an important factor in granting the licence. The Commission has already seen fit to reduce the repayment of the above-noted shortfall, and to substantially reduce a number of expenditure requirements despite Super Channel's non-compliance with these requirements. It is unfortunate that Super Channel again finds itself under CCAA protection, but it is also true that its actions have caused significant financial difficulty to numerous productions, including contributing to the cancellation of some. The WGC submits that Allarco should not be permitted to benefit from its own acts of regulatory non-compliance. We submit that Super Channel should retain COLs that are appropriate to a service of its nature, including its current CPE obligations.

CPE Requirements

12. The Commission set out its general approach to CPE requirements in Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming* (the Create Policy). At paragraphs 213-225, the Commission noted that: Canadians expect content of high quality from their television system, and the creation of compelling high-quality productions by Canadians requires financial investment; CPE requirements provide necessary incentives to create virtuous cycles of production, and are important tools to fulfil the objectives of the *Broadcasting Act* (the Act); CPE requirements are particularly important in light of the determinations elsewhere in the Create Policy reducing exhibition requirements; CPE requirements will be expanded to apply to all licensed programming services; and, this overall approach takes into account the possible impacts of other changes to be implemented in the Create Policy and other related determinations in the Let's Talk TV proceeding. As such, the Commission stated:

> In light of the above, in the English-language market (including third-language services), the Commission will apply CPE requirements to all licensed services. Services that do not currently have a CPE requirement will be assigned one at licence renewal. The CPE levels will be based on historical expenditure levels.[8]

13. Given this, the WGC submits that CPE minimum requirements for Super Channel should be set at its current level at least, which is 30% of its revenue for the previous broadcast year. In recent proceedings before the Commission, the WGC has argued that CPE and PNI components of Broadcasting Regulatory Policy CRTC 2010-167: *A group-based approach to the licensing of private television services* (the Group Policy) were intended to *grow* spending from historical levels for both

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[6] Application 2014-0383-1.
[7] Broadcasting Decision CRTC 2014-547
[8] Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming* (the Create Policy), para. 217.

CPE and PNI,[9] and that such minimum spending requirements for independent broadcasters should be set at historical expenditure levels, as averages of the most recent three years of spending, consistent with the Commission's past practice.[10] We reiterate those comments here. In the case of Super Channel, however, we recognize the financial difficulty experienced by the service, as described above.[11] As such, we do not propose a calculation methodology that would result in a higher CPE than the current 30%, but rather the WGC proposes that Super Channel be subject to a minimum CPE COL set at the *status quo* level of 30%.

14. Allarco, however, proposes a 25% CPE for Super Channel,[12] a 5% reduction from its current level. To support this request, Allarco cites a number of factors, including: changes to the regulatory framework introduced in the Create Policy, and other related policies pursuant to the "Let's Talk TV" proceeding;[13] competition with international "over-the-top" (OTT) players such as Netflix, Amazon Prime, and Dazn;[14] competition with vertically integrated (VI) domestic players;[15] the funding policies of the Canada Media Fund (CMF);[16] and, the CPE flexibility afforded large broadcasting groups under the Group Policy.[17]

15. The WGC submits that none of these arguments justify lowering Super Channel's CPE requirement from 30%. For one thing, many of these factors have been in existence since 2013 and before, when the Commission last renewed Super Channel's broadcasting licence. Super Channel made similar arguments at that time, as well as in its 2014 attempt to amend its $6 million repayment COL. The WGC submits that the presence of these factors did not result in a lower CPE then, and they should not do so now. On the contrary, as discussed above, despite these factors the Commission determined in the Create Policy that CPE was a central component of the Canadian broadcasting system and would be maintained at historical levels. The Commission continued this approach in Broadcasting Decision CRTC 2017-148: *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, and related decisions.

16. With respect to the argument in particular that the flexibility provisions of the Group Policy present Super Channel with a disadvantage which must be offset with lower CPE requirements, the Commission has already directly responded to this with regard to Super Channel itself:

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[9] WGC submission to Broadcasting Notice of Consultation CRTC 2017-429 (http://www.wgc.ca/files/WGC%20Submission%20BNC%202017%20429%20Group%20Licence%20Reconsideration.pdf), January 23, 2018. See in particular paras. 10-50.

[10] WGC submission to Select broadcasting licences renewed further to Broadcasting Notice of Consultation CRTC 2017-183: Applications 2017-0821-5 (Family Channel), 2017-0822-3 (Family CHRGD), 2017-0823-1 (Télémagino), 2017-0841-3 (Blue Ant Television General Partnership), 2017-0824-9 (CHCH-DT), 2017-0820-8 (Silver Screen Classics), 2017-0808-3 (Rewind), and 2017-0837-2 (Knowledge) (http://www.wgc.ca/files/WGC%20Submission%20BNC%202017-183%20Independent%20Broadcasters%20Renewal.pdf), February 15, 2018.

[11] While again noting the regulatory relief already granted in respect of that difficulty.

[12] APP-Doc 3 – Appendix 1 Supplementary Brief para. 15.

[13] APP-Doc 3 – Appendix 1 Supplementary Brief para. 10.

[14] APP-Doc 3 – Appendix 1 Supplementary Brief para. 11.

[15] APP-Doc 3 – Appendix 1 Supplementary Brief para. 16.

[16] APP-Doc 3 – Appendix 1 Supplementary Brief para. 17.

[17] APP-Doc 3 – Appendix 1 Supplementary Brief para. 12-13.

> In regard to the flexibility provisions of the group-based licensing approach, the Commission considers the licensee's arguments to be a mischaracterization of that approach. The flexibility provisions in place allow for the allocation of spending between different types of services, and do not reduce a group's overall CPE level. As a consequence, a licensee that is unable to take advantage of allocating spending across multiple services is not necessarily disadvantaged in terms of the requirements relating to its CPE level.[18]

17. On the question of carriage, the WGC has no direct knowledge of, and takes no position on, whether or not Super Channel is or has been disadvantaged with respect to carriage by vertically integrated or other broadcasting distribution undertakings (BDUs). We simply submit that to whatever extent that may be true, if it has occurred then the solution should be found with regard to BDU carriage, and *not* by reducing Super Channel's CPE or other programming-related obligations. If there is a carriage issue, it should be resolved as a carriage issue, and not at the expense of Canadian audiences who seek Canadian programming, nor the creators and others in the production community who produce it.

18. Allarco makes reference to the 10% minimum CPE that the Commission set in the Create Policy, and argues, "it would be inequitable to require Super Channel to fulfill a significantly higher CPE expenditure than those other Category B services."[19] However, Allarco fails to mention that the Commission already considered that question in the same decision and, as already quoted above, determined that "CPE levels will be based on historical expenditure levels."[20]

19. Finally, we note that Allarco has filed projections for Super Channel that show expected revenue growth, from nearly $32.6 million in F2018, to $39.6 million in F2022.[21] Given the significant financial difficulties that Super Channel has faced since it was licensed in 2006, as well as the increasingly competitive market that Allarco itself recognizes going forward, the WGC believes that such projections are optimistic in the extreme, and that they mask the potential impact on CPE spending of reducing the minimum CPE percentage. Indeed, Allarco states, "Super Channel will be increasing its commitment to Canadian programming [under existing CPE requirements] throughout its next licence period as revenues grow."[22] Yet neither Allarco nor the Commission can guarantee that revenues *will* grow, and the 5% CPE reduction proposed by Allarco will have an even greater negative impact than shown if Super Channel's revenues fall below projections. Since a percentage-based spending requirement *already* self-adjusts to increases or decreases in revenue, the WGC submits that the Commission should not base CPE levels on future projections, be they optimistic or pessimistic, but simply maintain Super Channel's CPE at 30%.

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[18] Broadcasting Decision CRTC 2014-547, para. 14.

[19] APP Doc10 [Re-filed Jan 2018] Appendix 4 – CPE Requirement Allarco Entertainment (2008) Inc., para. 9.

[20] Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming* (the Create Policy), para. 217.

[21] APP Doc10 [Re-filed Jan 2018] Appendix 4 – CPE Requirement Allarco Entertainment (2008) Inc., pg. 3.

[22] Application Documents, Deficiency response letter, October 12, 2017, pg. 4.

Apparent Non-Compliance Regarding CPE

20. The WGC has reviewed the most recent Statistical and Financial Summaries with respect to Super Channel,[23] and notes that for four of the past five years for which data is publicly available, Super Channel appears to have spent significantly less than its required minimum on Canadian programming. Specifically, the line titled, "Canadian Programming/Revenue (%)" in Super Channel's Statistical and Financial Summaries lists 11.21%, 16.21%, 24.54%, 28.16%, and 35.32% for each of the years 2012-2016, respectively. Yet during this period, Super Channel was subject to a COL requiring it to spend no less than 32% or 30% of the previous year's revenues. Even to the extent that the above-noted line in the Statistical and Financial Summaries compares spending on Canadian programming and revenues from the *same* year, and the CPE COL refers to revenues of the *previous* year, our calculations nevertheless indicate that, based on the information in the Statistical and Financial Summaries, Super Channel has spent less in CPE than required by its COL, and therefore is in apparent non-compliance with that COL.

21. Allarco states, however, that it has "fully respected the conditions of licence" since its 2013 renewal,[24] and the Commission has not highlighted this issue in any of its communications with Allarco on the public file. Further, Commission staff has drawn our attention to current COL #10, which allows Super Channel to use a mix of the accrual and cash bases of accounting in making its calculations with respect to CPE, with a reconciliation to be provided by the licensee, along with the fact that the information in the Statistical and Financial Summaries is reported using the accrual method, all of which may explain this apparent discrepancy. Unfortunately, a reconciliation from Allarco is not on the public record of this proceeding, nor is any other information explaining the matter and/or that would allow us to properly and independently examine Super Channel's compliance with its CPE requirements. As such, the WGC feels it must raise this issue on the public record, and ask that the Commission investigate and officially clarify the apparent non-compliance with respect to CPE and, if such an issue does exist, to take it into consideration in its determinations regarding Super Channel's licence renewal. We also note that intervenors and other members of the public cannot effectively comment upon renewal applications or other matters in the absence of publicly available information such as this.

Programs of National Interest (PNI)

22. The Commission stated the following in the Create Policy:

> The Commission considers that PNI expenditure requirements continue to be an appropriate tool for ensuring that Canadians have access to the maximum number of programs from program categories that are of national interest and that require continued regulatory support. This view was also shared by a vast number of interveners, including individual Canadians who participated in the proceeding.
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> PNI requirements were introduced in the English-language market in 2011, in the French-language market in 2012 and for CBC services in 2013. When the broadcasting licences for

[23] Individual Discretionary and On-Demand Services, Statistical and Financial Summaries, 2012 – 2016, CRTC, (https://crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2016/individual/ipsp2016.pdf), pg. 183.
[24] APP-Doc 3 – Appendix 1 Supplementary Brief, para. 8.

Rogers' services were renewed in 2014, the PNI requirements were made consistent with the other English-language ownership groups. Given the relatively short timeframe in which the PNI requirements have been in place, the Commission considers it would be premature to alter the policy at this time. The current requirements relating to PNI including the specific program categories in each linguistic market will therefore be maintained.[25]

23. Minimum PNI levels, like CPE, have also been calculated on the basis of historical spending on PNI.[26] As such, the Commission's approach to setting PNI levels has generally been consistent with its approach to CPE.[27]

24. Super Channel does not currently have a minimum PNI spending requirement. The WGC submits that it should be assigned one pursuant to this renewal.

25. PNI was initially implemented in the context of the Group Policy, with respect to the large, English-language broadcasting groups. However, it has not been limited to such groups, and currently independent services and "mini-groups", such as Family Channel, and the services of Blue Ant Media Inc., have PNI requirements. Further, Allarco itself has suggested a need for greater parity with the COLs of comparable services. With respect to current COL #6 and #7—regional outreach and script and concept development—Allarco points out that, "no other Canadian specialty channel has a similar condition of licence requirement".[28] This is true, but many others, including The Movie Network, which Allarco appears to note as a direct competitor,[29] *do* have PNI obligations. Further, as discussed below, Allarco is proposing to delete COL #7 with respect to script and concept development. If this request is granted, we submit that it will become even more appropriate that Super Channel be subject to a PNI obligation, since the PNI programming categories include those genres, drama in particular, that most intensively engage the script and concept development stage. Moreover, as a general interest pay television discretionary service, which historically airs dramatic feature films, series, and feature documentaries, it is entirely consistent for Super Channel to expend resources on PNI. Super Channel has done so in the past, including on drama series like the second season of *Pure*, feature films such as *Kiss and Cry*, and documentaries like *The Skyjacker's Tale* and *Celtic Soul*.

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[25] Broadcasting Regulatory Policy CRTC 2015-86, paras. 288-289.

[26] E.g. The Group Policy; Broadcasting Decision CRTC 2013-310: *Astral broadcasting undertakings – Change of effective control*.

[27] In Broadcasting Decision CRTC 2017-148, *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, and related decisions, the Commission deviated from its well-established policy and practice of setting PNI based on historical levels, and instead set PNI levels for Bell Media Inc., Corus Entertainment Inc., and Rogers Media Inc. at 5%. As the Commission is aware, the WGC, among others, submitted a petition to the Governor in Council pursuant to s. 28(1) of the Act, seeking to refer this decision back to the Commission for reconsideration, and that petition was granted. The Commission is currently in the process of its reconsideration under Broadcasting Notice of Consultation CRTC 2017-429, and the WGC has filed comments in that proceeding, available to the Commission there and on the WGC's website (http://www.wgc.ca/files/WGC%20Submission%20BNC%202017%20429%20Group%20Licence%20Reconsideration.pdf). We reiterate those comments here, particularly as they relate to the history of PNI policies and the continued appropriateness of setting PNI based on historical spending levels.

[28] Application Documents, Deficiency response letter, October 12, 2017, pg. 4.

[29] APP-Doc 3 – Appendix 1 Supplementary Brief para. 14.

26. For these reasons, the WGC submits that Super Channel should be made subject to a minimum PNI spending requirement pursuant to this renewal proceeding. In keeping with our comments above, we submit this requirement should be set based on Super Channel's historical spending on PNI. Such spending information, however, is not publicly available, and as such we request the Commission to perform the appropriate calculation based on its own data.

Script and Concept Development

27. Super Channel is currently subject to COL #7, which states:

> Included in the expenditures required under condition of licence 5, the licensee shall expend on script and concept development, including bursaries for writers, excluding overhead costs, at least $500,000 in each broadcast year.[30]

28. As discussed above, Super Channel was initially subject to a COL requiring it to expend $2 million on script and concept development, in addition to its required CPE, but given the financial difficulties faced by the service, the Commission reduced the requirement to that currently expressed in COL #7. The WGC notes that this requirement went from being $2 million *in addition* to CPE, to $500,000 *included within* CPE. The WGC submits that this was a very significant reduction of Super Channel's obligations, which not only cut the quantum of the commitment by 75%, but also effectively eliminated it as a separate and additional requirement apart from CPE. Now, Allarco seeks to remove this COL entirely.[31]

29. The WGC is disappointed that Allarco is seeking to eliminate this COL. We are further disappointed by Allarco's reply to the Commission's questions on this topic. In its letter dated October 12, 2017, Allarco responds to questions posed by the Commission in an October 11, 2017 letter, of which Question 4 was:

> In the event that the Commission approved your request to remove conditions of licence 6, 7 and 8, please explain how your service would still achieve the objectives of doing regional outreach support for script and concept development.[32]

30. Allarco responded, in part, by saying that, "Super Channel will continue to be an important source of funding for independent producers through the acquisition of Canadian programming, which will be exhibited on the service."[33] Allarco made no further statement or specific commitment with regard to script and concept development, and simply reiterated that other services do not have such a requirement. Given the generality and imprecision of this response, the WGC is not confident that Super Channel will continue its commitment to financing development in the absence of a COL. This is particularly concerning at a time when the importance of development is greater than ever. The WGC has spoken at length about the importance of the development process,[34] and the Minister of

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[30] Broadcasting Decision CRTC 2013-468
[31] APP-Doc4 – Appendix 1A - Conditions of licence, expectations and encouragements, pg. 4.
[32] Application Documents, Deficiency response letter, October 12, 2017, pg. 3.
[33] Application Documents, Deficiency response letter, October 12, 2017, pg. 4.
[34] E.g. WGC 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* (First Phase), December 1, 2017, paras.

Canadian Heritage, the Hon. Mélanie Joly, has referred to the crucial role of development in her "Creative Canada" policy vision.[35] As noted above, this COL was an important factor in the Commission's decision to first license Super Channel, yet it was not met in Super Channel's first licence term and was then substantially reduced in its second term. We submit that Super Channel should not be permitted now to simply walk away from script and concept development and, as such, submit that the current COL be retained.

31. As discussed above, the WGC is proposing a PNI requirement for Super Channel. While a PNI requirement alone does not replace dedicated funding for development, the WGC submits that if the Commission does choose to eliminate the current COL #7 for Super Channel, a PNI requirement becomes even more important, since it involves spending in development-heavy genres like drama, which in turn may help partially offset the negative impacts of a decision to eliminate this COL.

Apparent Non-Compliance and/or Reporting Error

32. The WGC has reviewed the most recent Statistical and Financial Summaries with respect to Super Channel,[36] and notes that the line for "Script & Concept" show $0 in spending for each of the five years reported on. Given that, as discussed above, Super Channel's COL #7 requires the licensee to "expend on script and concept development, including bursaries for writers, excluding overhead costs, at least $500,000 in each broadcast year," we would expect to see at least $500,000 recorded in this cell for each of the applicable years. Yet no spending is recorded. As such, we can only conclude that either there has been some sort of reporting error in this regard, and/or Super Channel is in non-compliance with respect to this COL. We ask the Commission to investigate this.

33. Further, in Broadcasting Decision CRTC 2013-468, the Commission imposed COL #8, 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.

34. The Commission also imposed a reporting requirement in this respect, COL#9, which states:

> The licensee shall submit annual reports to the Commission detailing the amount spent on the payment of the shortfall on expenditures on regional outreach programs and on script and concept development as well as on the initiatives that received funding, concurrently

81-83 (http://www.wgc.ca/files/WGC%20Submission_BNC%202017-359_Future%20programming%20models_FINAL.pdf); WGC submission to Canadian Content in a Digital World Consultations, November 25, 2016, paras. 102-116 (http://www.wgc.ca/files/WGC%20Submission%20Canadian%20Content%20in%20a%20Digital%20World.pdf).

35 Creative Canada Policy Framework, Pillar 1.2 (https://www.canada.ca/en/canadian-heritage/campaigns/creative-canada/framework.html).

36 Individual Discretionary and On-Demand Services, Statistical and Financial Summaries, 2012 – 2016, CRTC, (https://crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2016/individual/ipsp2016.pdf), pg. 183.

with the filing of its annual returns on 30 November of each broadcast year, until the total amount of the shortfall has been paid.

35. The Commission appears to have posted these annual reports on its website, on the webpage entitled, "Annual/Monthly Reports Filed by Broadcasting Industry Players",[37] under the heading, "Regional Production Reports and Plans" for Super Channel. These reports are available for 2014, 2015, 2016, and 2017. As they pertain to script and concept development, while the 2014 and 2015 reports show compliance with COL #8, recording over $1 million in spending each year, the 2016 and 2017 reports do not. The 2016 report only shows spending in the amount of $130,075 that year, and the 2017 report records no spending at all ("No Activity"). This appears to indicate non-compliance with COL #8 for 2016 and 2017, since the COL requires at least $1 million in spending for each of these years. Allarco indicates it "will have fully respected the conditions of licence" by the anticipated date of licence renewal, which is September 1, 2018.[38] However, COL #8 requires the relevant sum to be spent by August 31, 2017, not one year later, and in any event such spending has not been publicly reported so the WGC or other members of the public cannot independently assess if and how the COL has indeed been met. As such, we ask the Commission to investigate and clarify this matter.

Licence Term

36. Allarco seeks to renew Super Channel's licence for a term of five years.[39] The WGC opposes this request. Given the significance and duration of the financial difficulty that Super Channel has experienced, as well as the repeated non-compliance and apparent non-compliance with its COLs in the past, combined with the fact that as of this date Super Channel is still apparently under CCAA protection, we submit that a five-year term is too long. The WGC proposes a much shorter term, of no longer than three (3) years. A shorter, three-year term will allow the Commission to better monitor the outcomes of this renewal, and to review Super Channel's conditions again in the near future.

37. The WGC submits that a shorter term would be *especially* appropriate if the Commission deems to grant Allarco any degree of regulatory relief as a result of Super Channel's current challenges. To be clear, the WGC is not proposing, nor do we support, any such relief. We acknowledge the challenges faced by Super Channel, but we submit that a broadcasting licence continues to come with both privileges and obligations, the latter of which should be meaningful and must be respected as long as the former are enjoyed. Other channels, whether independently owned or not, have not faced the same apparent difficulties that Super Channel has, and despite the changing business landscape, the Commission continues to expect Canadian broadcasters to help achieve the objectives of the *Broadcasting Act*. We submit that Super Channel is no exception. However, if the Commission does see fit to grant additional relief in this proceeding, it will be that much more crucial that it is able to review Super Channel's status again in a relatively short period of time.

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[37] https://crtc.gc.ca/eng/BCASTING/ann_rep/annualrp.htm#allarco

[38] APP-Doc 3 – Appendix 1 Supplementary Brief para. 8-9.

[39] APP-Doc 3 – Appendix 1 Supplementary Brief para. 21.

Conclusion

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

Yours very truly,

Maureen Parker
Executive Director

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