Writers Guild of Canada

August 15, 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

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.

The WGC **requests to appear at the public hearing** scheduled to continue on 28 November, 2016, in Gatineau, Quebec, in order to further elaborate on the issues addressed in this submission from the perspective of English-language screenwriters.

The WGC **tentatively supports** the applications, subject to our concerns and comments below.

Given our membership and expertise, the WGC's comments in this submission focus primarily on the English-language television market, and the applications of the English-language groups, namely, Bell Media Inc. (Bell), Corus Entertainment Inc. (Corus), and Rogers Media Inc. (Rogers).

Executive Summary

ES.1 Having reviewed the submissions of the three English-language broadcast groups, the WGC believes that "standardization" is a theme in this proceeding. The concept of "standardization" may relate to Canadian programming expenditures (CPE), programming of national interest expenditures (PNI), diversity of programming, exhibition requirements, and arguably the nature of the Group Policy post- "Let's Talk TV". The WGC agrees that with the Create Policy the Commission has moved the regulatory needle further in the direction of regulatory parity, but we disagree that that means all services or all designated groups should be treated identically. We

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submit that both the Commission and the broadcast groups themselves have recognized this. Groups have different asset mixes and individual services retain individual histories, subscriber bases, revenue levels, identities and brands. As such, we submit that "regulatory parity" should not override other important objectives of the *Broadcasting Act*.

ES.2 The creation and presentation of Canadian programming is at the centre of the Canadian broadcasting system, and its role in this proceeding is one of the WGC's primary areas of focus. In our view, maintaining the CPE/PNI regime—and, crucially, ensuring the appropriate *level* of CPE/PNI obligations—is one of the most fundamentally important aspects of these licence renewals.

ES.3 The Group Policy was preceded by the 1999 TV Policy, which had removed expenditure requirements on Canadian programming and replaced them with an emphasis on the exhibition of "priority programming" in peak viewing hours. The WGC believes that this resulted in broadcaster emphasis on cheaper Canadian programming that could be scheduled largely in shoulder periods and used to fill hours. This, in turn, meant that spending on Canadian programming was suboptimal while the 1999 TV Policy was in effect. In 2010 the Group Policy was released, which expanded CPE, created the concept of PNI, and then set minimum spending levels for each based upon historical spending by the large, English-language broadcast groups. Importantly, these spending levels were set based on the three years of 2008-2009, 2009-2010 and 2010-2011. These years were from a period in which: 1) spending was already suboptimal, under the 1999 TV Policy; and 2) Canada was amidst a global recession. As a result, the Group Policy set, as its baseline, minimum Canadian programming spending levels that the WGC submits were suboptimal. The Commission expected that spending to increase over time as broadcaster revenues increased. However, that did not occur and spending has therefore not increased, and in fact spending has decreased in at least some cases.

ES.4 The WGC submits that the discussion on the proper levels for CPE and PNI must be considered in the context of how levels were set in 2010/2011. If spending before 2010 was suboptimal, then the CPE and PNI spending requirements that were based on that historical spending—and, in the case of PNI, rounded downwards from there—were also suboptimal. If we are now in an era in which we cannot rely on revenue growth to get spending on Canadian programming to stronger levels, then we submit that the Commission should very closely consider raising the percentages for CPE and PNI.

ES.5 The WGC is disappointed to see that Bell and Corus have proposed significant decreases in CPE and PNI spending over the next licence term for their English-language groups. The WGC is party to a report by Boon Dog Professional Services Inc. that demonstrates that, for PNI alone, if the 5% PNI level 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 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. Since broadcaster spending triggers production financing from other sources, the impact on overall production volume would be even higher.

ES.6 Such an extraordinary impact must have an extraordinary justification. The WGC finds the reasons provided by Bell and Corus on the matter to be wanting. "Standardization" by itself is not a sufficient justification, given our comments on the subject above. Further, broadcaster proposals themselves do not reflect a "standardized" approach since Bell, for example, uses various inconsistent historical methods to achieve its proposed spending levels, while Corus bases its proposals on subjective bases. Both Bell and Corus point to financial challenges ahead for the sector, but the WGC submits that those challenges have already been considered in previous policy determinations to maintain the current, group-based approach. Further, a percentage-based model will automatically respond to future challenges.

ES.7 Regarding recalculation of PNI, our analysis indicates gaps and potential inconsistencies in the data that prevents us from doing a full analysis ourselves. However, our preliminary calculations suggest a new PNI for Bell of approximately 8% and for Corus of approximately 8%. We urge the CRTC to do its own calculation based on the complete data available to it, which may not currently be on the public record. We submit that such a calculation should reflect, at the very least, status quo with respect to real PNI spending levels across all the English-language broadcast groups. There should be no reason for real PNI spending across the three groups to drop as a result of this renewal proceeding.

ES.8 The Commission has stated that original first-run Canadian productions add more value to the system, and that at the heart of a quality Canadian television experience for the viewer is the ability of the system to continually create attractive new Canadian programs. The WGC agrees, but believes that the current definitions of what constitutes such programming are unclear and inconsistently interpreted by broadcasters. Clear and detailed definitions are therefore needed. In the WGC's view, there are effectively three relevant forms of broadcaster spending on programming: 1) "out-of-pocket" cash spending on new production that occurs in and around production itself; 2) amortization of that spending on new production, generally over the course of the licence term; and 3) spending on acquisitions or "library content" that is already-existing programming. The WGC believes that the Canadian broadcasting system should ensure CPE and PNI focus on spending on new production, and therefore that appropriate definitions exclude "3)" from being counted as "original, first-run" and/or "new commissioned" programming. Once such a definition or definitions is/are in place, we submit the Commission should consider whether it is necessary to establish minimum CPE/PNI spending on new production.

ES.9 In its application, Bell has applied to delete the conditions of licence for Bravo! and Much regarding contributions to Bravo!FACT and MuchFACT respectively. The WGC submits that individual contributions to Bravo!FACT and MuchFACT are effectively CPE/PNI contributions, and if Bell wishes to eliminate these particular contribution regimes then their value should be added to the historical calculation of CPE and PNI that Bell must meet during the next licence term.

ES.10 The WGC does not object to any of the English-language group's proposals for inclusion within their designated group.

ES.11 The Commission noted the importance of script and concept development over a year ago in the Create Policy, and raised script and concept development with licensees during the application process earlier this year. As such, the WGC was disappointed that the question of development received relatively little attention from the English-language licensees. Script and concept development is an essential component making high-quality television programming, especially with respect to "Category 7" drama and comedy programming, because the script sets out characters, story arc(s), themes, tone, and dialogue—i.e. what people talk about when they talk about their favourite TV show. The current "Golden Age of TV" is and has been largely attributed to the rise of the showrunner, and it is the showrunner and the screenwriters that effectively creates the show. It is during the development process that the most important resource for screenwriters is either provided or not: the time to make the script the best it can be.

ES.12 Unfortunately, script and concept development does not receive the attention it deserves in the Canadian system, and changes in broadcaster spending increasingly put the burden of financing development on producers and, in turn, on writers themselves. This hurts the quality of Canadian programming. As such, the WGC believes it is time to make minimum spending by broadcasters on script and concept development a regulatory requirement. We propose that the Commission require, by condition of licence, that a minimum amount of broadcaster spending be to directed to script and concept development activity. At this time the WGC does not have the relevant data to assess what level of spending is currently directed to development. As such, we are asking the Commission to obtain and make public, for the purposes of this proceeding, the spending of each of the designated English-language groups on script and concept development, broken out annually for each year of the current (2011-2017) licence term that data are available.

ES.13 While the Commission has eliminated the genre exclusivity policy, it has still maintained an interest diversity of programming in the Canadian broadcasting system. In this context, the WGC opposes the request by Corus to delete condition of licence 3(b) for TELETOON/TÉLÉTOON, which states, "In each broadcast day, the licensee shall devote at least one hour between 8 p.m. and midnight to the broadcast of Canadian programs." The WGC submits that while this condition of licence may appear to be a "mere" exhibition requirement, it is in fact about the creation of edgy, adult-oriented animation that is best suited to be aired in the 8 p.m.-to-midnight timeslot on an animation-branded service such as TELETOON/TÉLÉTOON.

Introduction

1. In March, 2010, the Commission released "A group-based approach to the licensing of private television services", Broadcasting Regulatory Policy CRTC 2010-167 (the Group Policy).[1] In it, the Commission established a licensing framework based on large broadcast ownership groups, and shifted emphasis from the exhibition of Canadian programming to expenditures on Canadian programming. The Commission implemented the Group Policy in 2011, in Broadcasting Decision CRTC 2011-441 and related renewal decisions[2], in which it maintained and operationalized its findings in the Group Policy. More recently, in 2015 the Commission released a series of policies as a result of the "Let's Talk TV" consultation, most notable for the purposes of the current proceeding was

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[1] Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services*, 22 March 2010.
[2] Broadcasting Decision 2011-444 (Bell Media Inc.), Broadcasting Decision 2011-445 (Shaw Media Inc.), Broadcasting Decision 2011-446 (Corus Entertainment Inc.), and Broadcasting Decision 2011-447 (Rogers Media Inc.).

Broadcasting Regulatory Policy CRTC 2015-86, "The way forward - Creating compelling and diverse Canadian programming" (the Create Policy).[3] In the Create Policy, the Commission maintained the expenditures regime set out in the Group Policy, further expanded the scope of its expenditures-based approach, and eliminated genre exclusivity, among other things.

The Question of "Standardization"

2. Having reviewed the submissions of the three English-language broadcast groups, the WGC believes that "standardization" is and will continue to be a theme in this proceeding. All three English-language broadcast groups have noted the concept in their application documents, in respect of various issues. For example, Bell said:

> The Commission's regulation of television services now reflects a more forward-facing, standardized approach. Subject to meeting certain specific standard requirements, every Canadian conventional television station and discretionary service will be free to compete for the interest and attention of Canadian consumers. The Commission's group policy must reflect these recent regulatory changes.[4]

3. Bell was speaking in the context of Canadian programming expenditure (CPE) obligations, and indeed it is the question of Canadian programming expenditures, and especially programming of national interest (PNI) expenditures, with which the WGC is most concerned. However, the concept of "standardization" touches upon more than that, and includes issues of diversity of programming, exhibition requirements, and arguably the very nature of the Group Policy post- "Let's Talk TV". For this reason, it may be helpful to discuss the issue in general terms here. We will revisit "standardization" in specific contexts in further detail later on.

4. It was arguably the decision to eliminate the genre exclusivity policy, and the policies that logically flowed from that decision, that has most contributed to arguments for "standardization". As Corus put it:

> The Create Policy eliminated genre exclusivity in March 2015 and, starting with the next licence term, will eliminate all access privileges as well as the various licence categories for discretionary services. Moreover, the Wholesale Code circumscribed (as of January 2015) the negotiations of wholesale rates for discretionary services.
>
> This means that all discretionary services will in the next licence term become de facto Category B services with similar standard COLs including standard Canadian Content requirements and no access privileges. They will have wholesale rates and advertising revenues that will vary significantly in the next licence term given the Wholesale Code and the new packaging rules established by the Create Policy.[5]

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[3] Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming*, 12 March 2015.
[4] Application of Bell Media Inc., "Application for Renewal, 18 April 2016", Appendix C, para. 52.
[5] Application of Corus Entertainment Inc., "Group Issues – CPE and PNI", pg. 2.

5. Corus concludes, among other things, this means that, "in the next licence term all discretionary services will be on an equal footing from a regulatory perspective."[6]

6. The WGC agrees that with the Create Policy the Commission has moved the regulatory needle further in the direction of regulatory parity. With the elimination of genre exclusivity in particular, the Commission has created a regulatory environment in which broadcasting services have become more similar to each other than they were before.

7. We disagree, however, that we now operate in a broadcasting system in which all services—or, by extension, all designated groups—are or should be treated identically. Put another way, the question of "standardization" does not rest on a Manichean, all-or-nothing determination. Broadcasters in this proceeding have made statements suggesting that before the Create Policy, it was appropriate to treat services and/or groups differently from each other, but now they are effectively the same and must be regulated to identical standards. The WGC rejects this view, and argues instead that regulatory heterogeneity does not exist as one of two options, the other being homogeneity. Rather, these concepts exist on a spectrum, with various points in between. We submit that it is a false dilemma to say that identical treatment of broadcasters is the only logical outcome of the Create Policy.

8. For one thing, the Commission itself has recognized that "exceptions" to its move towards standardization are appropriate. For example, with respect to exhibition obligations, the Commission said in the Create Policy:

> The Commission recognizes that there may be services which will require a more individual approach to exhibition requirements. As an example, peak viewing periods are different for children's and youth programming. These particular circumstances will be considered at licence renewal on a case-by-case basis as required.[7]

9. This statement clearly implies differential treatment for services that are targeted to children and youth audiences, which in turn implies that such services will continue to exist as "children's services".

10. For another thing, broadcasters themselves have recognized that not all services are identical, and some have requested specific regulatory exceptions based on the particular nature of some services. For example, Bell notes that a standardized 35% Canadian content exhibition requirement, as stipulated in the Create Policy, for TMN, TMN Encore, Super Écran and Cinépop would represent an increase in the exhibition requirements of those services, which currently have requirements ranging from 20% to 30%. Bell states:

> These obligations reflect the specific genre in which these services operate (premium pay television) and the difficulties associated with producing premium dramatic series and Canadian feature film. While the Canadian content exhibition change and the elimination of genre protection will provide significant added flexibility to some services, TMN and

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[6] *Ibid.*

[7] Para. 196.

TMN Encore do not intend to dramatically change the nature of the programming they offer to subscribers.[8]

11. Bell therefore requests an exception to the 35% standard exhibition requirement in the Create Policy, in exchange for a Nature of Service condition of licence.[9]

12. As such, both the Commission and broadcasters appear to acknowledge that not all services are the same. We agree, and simply observe that despite a move towards regulatory parity by the Commission, individual services and groups are in fact not identical. However they are treated at the regulatory level, individual broadcasting services have their own particular histories (including their familiarity with the public), subscriber levels, programming identities, revenue profile and, perhaps most importantly of all, their brand. Corus provides an example of the importance broadcasters place on brands:

> Corus develops its programming strategy for these successful shows through segments dedicated to the target audience it serves, such as "Women's and Lifestyle", "Kids" and "General Entertainment". Within these portfolios each individual brand establishes a strategy specific for the type of program that relates to its audience defined by age/gender, genre of program offering or themes within the programming schedule.[10]

13. Corus goes into further detail:

> HGTV Canada and Food Network Canada are brands which have developed loyal and dedicated viewers who engage with the brand on all platforms. HGTV has a Facebook reach of over 5 million and a twitter reach of almost 10 million, HGTV fans are engaging with our content at a rate far above industry standard for these platforms. Food Network Canada's linear broadcast content lends itself to a broad digital and social strategy for a full 360 experience for our viewers. We have loyal and dedicated viewers who engage with the brand on all platforms. Our Foodnetwork.ca site averages 9.8 million page views monthly.[11]

14. Clearly, individual services are not simply generic, undifferentiated receptacles for programming. They maintain a nature and identity which is real, and this fact is clearly recognized by broadcasters themselves.

15. Given the above, the WGC submits that, firstly, the *Broadcasting Act*, the Commission's broadcasting policies generally, and the Create Policy in specific, have a variety of objectives, crucially among them the creation and presentation of Canadian programming. The move towards regulatory parity should not and cannot become the Commission's top priority, such that these other objectives are subordinated to "standardization". The alternative is the very real risk of calibrating Canadian

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[8] Application of Bell Media Inc., "Application for Renewal, 18 April 2016", Appendix C, para. 80.
[9] The Nature of Service proposed, however, strikes us as rather broad, namely, a "national, general interest English-language discretionary services focused on premium dramatic and comedy series, documentaries, movies, sports and events."
[10] Application of Corus Entertainment Inc., "Discretionary Services", pg. 2.
[11] *Ibid.*, pg. 6.

programming policies to the lowest common denominator, for a net decline in the quality and quantity of such programming in the system.

16. Secondly, we submit that the Commission's hands are not tied with respect to pure "regulatory parity", notwithstanding the elimination of genre exclusivity. As we will argue below, certain policies may make sense in reference to what individual services or groups actually are, as opposed to some generic average of what the industry might look like in the future.

17. To be clear, the WGC is not opposed to standardization per se, and indeed the Commission has already moved in that direction.

CPE and PNI Levels

18. The creation and presentation of Canadian programming has been at the centre of the Canadian broadcasting system—and the centre of the *Broadcasting Act* (the Act)—from its earliest days. The concept of Canadian programming is expressed at least a dozen times in section 3(1) of the Act, as arguably the primary manner in which its various social and cultural objectives are effected. Indeed, it's virtually impossible to imagine a distinct, meaningful "Canadian broadcasting system" without Canadian programming. The creation of Canadian programming has long been the key challenge of the English broadcasting system, faced as it is with the multiple challenges of being produced for a small market while being linguistically and geographically proximate to the largest media production centre on the planet.[12]

19. It is no surprise, then, that a key preoccupation of the Commission is and has long been to respond to these challenges and create a space for Canadian programming in the system. In the Group Policy the Commission examined the policy tools available to it in this respect and, among other things, turned from exhibition requirements for private English-language broadcasters to expenditure obligations, expanding CPE and creating the new category of PNI, each with their own spending obligations. The WGC has applauded this move by the Commission as one of the best ways to promote the creation of new Canadian programming. In the Create Policy the Commission went further, scaling back exhibition requirements while expanding expenditure obligations. Given a number of other policy changes made by the Commission in the Let's Talk TV proceedings, the WGC perceived that the Commission was turning to expenditure rules as very arguably the primary support for Canadian programming. In the oral phase of the Let's Talk TV proceeding, we said that if the Commission were going to rely primarily on expenditure requirements to support Canadian programming—while relaxing or eliminating regulation on things like exhibition, genre exclusivity, and preponderance, with unbundling also added in—then those expenditure requirements must be at sufficient levels and the rules must be ironclad.[13] We continue to believe that today.

20. As such, it will be no surprise that the WGC is focusing on the issues of CPE and PNI in our intervention in the current proceeding. In our view, maintaining the CPE/PNI regime—and, crucially, ensuring the appropriate *level* of CPE/PNI obligations—is one of the most fundamentally important aspects of these licence renewals. We have devoted considerable time to parsing the data provided by

[12] The WGC went into further detail on these challenges in our written submission to Broadcasting Notice of Consultation CRTC 2014-190, *Let's Talk TV*, June 27, 2014, at paras. 1-32.
[13] Broadcasting Notice of Consultation CRTC 2014-190, *Let's Talk TV*, Transcript, September 11, 2014, 9410-9411.

broadcasters in this proceeding, and in the pages that follow we provide our views on how CPE/PNI levels can be best set to ensure the attainment of the Commission's goal of "stable, continued support for the creation of Canadian programming, particularly in regard to programming that is under-represented in the Canadian broadcasting system."[14]

21. Given the nature of the WGC's membership, our primary focus in our comments are with respect to PNI. We nevertheless believe, as a matter of principle, that robust CPE levels are also of great importance to the health and value of the broadcasting system.

History and Context of the Group Policy Re: CPE & PNI

22. As the Commission stated in the Notice:

> The Commission established the group-based approach to the licensing of private television services in Broadcasting Regulatory Policy 2010-167. It was developed to better prepare the broadcasting industry and the Commission to the changing reality of Canada's broadcasting system, in which most Canadian programming services are operated by large integrated groups. To achieve this, the Commission focused on expenditures for the production of Canadian programming rather than on the broadcast of such programming.[15]

23. It is important to note, however, what preceded the Group Policy, namely, Public Notice CRTC 1999-97, entitled, *Building on success - A policy framework for Canadian television* (the 1999 TV Policy). In a paper prepared for the 15th Biennial National Conference: New Developments in Communications Law and Policy, Professor Douglas Barrett, following interviews with 16 industry veterans, summarized the 1999 TV Policy as follows:

> Suffice to say, [the policy] is one of the most bitterly controversial decisions on record. At a recent industry conference the [then] Chair said simply that the approach set out in the policy "had not worked".
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> The part of the policy that got everyone steamed involved the removal of all previous requirements for expenditures on Canadian programming and their replacement with a regime requiring a minimum of 8 hours per week of "priority programming". Further, a related policy release defined priority programming in a manner that gave wide flexibility and latitude to broadcasters to avoid costly commitments to the carriage of such categories as drama and documentaries by, for example, including entertainment magazine programing in the definition. In addition, the Commission reinforced its definition of prime time as running from 7pm to 11pm, permitted the scheduling of priority programming in the shoulder time period before 8:00pm.[16]

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[14] Broadcasting Notice of Consultation CRTC 2016-225, para. 11.
[15] Para. 11.
[16] Douglas Barrett, Nicholas Mills, "Top Ten Game Changing CRTC Decisions", 15th Biennial National Conference: New Developments in Communications Law and Policy (A National Symposium of The Law Society of Upper Canada and the Media and Communications Law section of The Canadian Bar Association), April 1, 2010, pg. 8-14.

24. The WGC was among those who were "steamed". In our view, one of the key outcomes of the 1999 TV Policy was that broadcasters, in general, focused on less expensive Canadian programming in order to fill hours to meet the exhibition requirements. If the Commission in 1999 had hoped that the requirement to dedicate lucrative peak-viewing time slots to Canadian programming would incent broadcasters to maximize the quality and value of that programming, that hope was frustrated. Instead, broadcasters generally spent as little as they thought feasible and directed the results to shoulder periods and weekends. As a result, less was invested in Canadian programming than what would be considered optimal. The point, for the purposes of the current proceeding, is that in the lead-up to the Group Policy in 2010, broadcasters were underspending, and this was a key component of what "had not worked" about the 1999 TV Policy. This underspending was to effectively become the benchmark for what followed.

25. In the WGC's view, the Group Policy was an improvement over the previous policy framework. As noted above, the Commission shifted to an expenditure-based model, which required minimum spending by broadcasters on Canadian programming, set as a percentage of revenue. Those levels were set, however, based on the historical spending in the year prior. As stated in the *Group-based licence renewals for English-language television groups – Introductory decision*, in which the Group Policy was implemented [emphasis added]:

> In the Commission's view, the group-based policy clearly contemplates that CPE requirements for conventional television stations be set at a specific level throughout the licence term. <u>This level should be consistent with historical spending by the group</u>…
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> …. Having taken into consideration both the financial information submitted by the groups as well as the various evidence and proposals submitted by the groups and interveners, the Commission continues to be of the view that a group CPE level of 30% would be appropriate for each of the designated groups. <u>This level is consistent with historical expenditures</u>, ensures substantial stable funding for Canadian programming, and places a reasonable limit on foreign programming expenditures.
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> … Having examined the financial information submitted by the designated groups as well as the proposals and evidence submitted by interveners, the Commission considers that a PNI expenditure level of 5% would be appropriate for the Bell Media group and the Shaw Media group, and that a PNI expenditure level of 9% would be appropriate for the Corus group. <u>In each case, the Commission has taken into consideration the historical PNI expenditures spanning the 2008-2009, 2009-2010 and 2010-2011 broadcast years and rounded these expenditures down to the nearest percentage point.</u>[17]

26. As such, the CPE and PNI levels set by the Commission in 2011 were based on historical expenditures—historical expenditures which were made during the term of the 1999 TV Policy, which allowed for lower broadcaster spending than what many, included the Commission itself, considered ideal. Compounding this was that these years also coincided with a major drop in television advertising revenue as a consequence of the recession of the late 2000s and early 2010s, which itself followed the worldwide financial crisis of 2007-2008. Basing CPE and PNI on historical spending during this period effectively resulted in a "double whammy" which depressed spending levels significantly from

[17] Broadcasting Decision CRTC 2011-441, paras. 21, 29, and 48.

where we think they should have been. The WGC, among others, proposed a 10% PNI spending requirement at the time.

27. Nevertheless, the Commission believed that rising revenues would result in the growth to Canadian programming spending that was clearly sought [emphasis added]:

> While this percentage level will remain fixed over the licence term, the dollar value of this CPE requirement will increase as conventional television station revenues increase, and will not be limited or offset in any way by increases in specialty and pay services revenues. Similarly, specialty and pay services will continue to have fixed CPE percentage levels, which also represent dollar values that will increase as revenues increase, without a limitation or offset related to conventional television station revenues. In the Commission's view, <u>this method is the most likely to result in a greater overall contribution to Canadian programming by each of the groups</u>.[18]

28. Unfortunately, this has not worked out as intended. Using Bell Media as an example, based upon information filed by Bell (and its predecessor CTVglobemedia) and published by the Commission, PNI spending, for example, has decreased for Bell, not only during the current licence term, but also in comparison with several years preceding the current term, prior to the implementation of the group-based licensing regime (see Table 1 below).

Table 1: Bell Media/CTVglobemedia Historical PNI Spending

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Drama and Comedy (Cat. 7)	$73,867,207	$50,714,287	N/A	N/A	$39,230,571	$55,496,021	$53,825,000	$24,620,000
Long-form Documentary (Cat. 2b)	$22,839,669	$19,905,960	$17,994,609	N/A	$28,474,763	$30,078,702	$30,026,000	$35,975,000
Awards Shows (not including Cat. 11a)	$2,356,501	$2,172,799	$2,744,419	N/A	$2,774,000	$7,196,652	$8,237,000	$7,130,000
Total PNI	**$99,063,377**	**$72,793,046**	**N/A**	**N/A**	**$70,479,334**	**$92,771,375**	**$92,088,000**	**$67,725,000**

Notes:

1) Amounts above exclude any Canada Media Fund top-up.

2) As part of the first group licensing proceeding in 2010-2011, the CRTC required the broadcast groups to file historical (i.e., 2007-2008, 2008-2009, and 2009-2010) Long-form Documentary and Awards Shows spending data for the group as a whole. The numbers above prior to 2011-2012 are those filed by then-CTVglobemedia.

3) The cells with the broadcast years highlighted in blue above represent the current Bell Media group licence term.

Sources:

1) Data filed by then-CTVglobemedia during the first group licensing proceeding in 2010-2011 (File name: DOCS-#1426082-v1-2010-1261-6-CTVgm-_Group-Tables.XLS)

2) Bell Media/CTVglobemedia Aggregated Annual Returns

3) 2007-2008 and 2008-2009 pay and specialty TV drama spend data come from the CRTC's Pay and Specialty TV Programming and Production Expenses database made available at that time by the CRTC to the WGC

[18] *Ibid*, para. 22.

29. These numbers, particularly with respect to drama and comedy programming, are very concerning, and we are now in an era of declining revenue for conventional television and slowed revenue growth for discretionary services. As such, we cannot rely on revenue growth to get us to a desired spending level from where the baseline was set in 2011. Indeed, in the Notice the Commission reports that "PNI expenditures of the large English-language designated groups saw an annual decrease of 12.7%, dropping from a cumulative sum of $158.5 million in the 2011-2012 broadcast year to $105.4 million in the 2014-2015 broadcast year."[19] This cannot have been the intended medium-to-long term outcome of the Group Policy.

30. The WGC submits that the entirety of the discussion on the proper levels for CPE and PNI must be considered in this context. <u>The Commission agreed in 2010 that the previous policy had resulted in suboptimal support for Canadian programming, and sought to raise spending gradually by relying on revenue growth.</u> If spending before 2010 was suboptimal, then CPE and PNI spending requirements that were based on that historical spending—and, in the case of PNI, rounded *downwards* from there—were also suboptimal. If we are now in an era in which we cannot rely on revenue growth to get spending on Canadian programming to stronger levels, then we submit that the Commission should very closely consider raising the percentages for CPE and PNI. *Any* percentage-based model will respond to rising or falling revenue levels, and as such increased spending requirements as a percentage of revenue should not represent a significant impediment to broadcasters' financial health. Given where we've started, the WGC strongly believes it's the correct direction to go in.

31. Nevertheless, the WGC is cognizant of the fact that the Commission has indicated that CPE percentages will be maintained.[20] With respect to PNI, the Commission has said that the "requirements" will be maintained.[21] The WGC is hopeful that the different wording implies the Commission's willingness to consider increases in percentage of PNI, while maintaining the general requirements of the PNI regime as a whole.

32. In any event, the Notice, and the Create Policy before it, are clear that the Commission intends to maintain CPE and PNI so as to ensure "stable, continued support for the creation of Canadian programming". It is unfortunate, then, to see that several of the English-language broadcast groups—in particular Bell and Corus—are actually proposing *decreases* to the percentages of CPE and PNI. The remainder of this section of our submission will analyze and respond to those proposals.

CPE and PNI Levels for the Next Licence Term

33. In the Create Policy, the Commission said it would maintain and expand the CPE regime. As the Commission summarized in the Notice:

> The Commission has stated that for the large private ownership groups currently operating under the group-based approach, the current CPE percentages to which they are subject will be maintained. Also to be maintained is the approach for calculating the eligibility of expenditures, set out in Public Notice 1993-93. In addition, services that are part of a group will be subject to CPE requirements that contribute appropriately to that

[19] Para. 19.
[20] The Notice, para. 28.
[21] The Notice, para. 30.

> group's overall CPE level. At licence renewal, the Commission also intends to apply CPE requirements to all licensed services that have more than 200,000 subscribers. The CPE percentage will be based on historical expenditure percentages, with a minimum threshold of 10%.[22]

34. Similarly, the Commission stated the following in the Notice with respect to PNI:

> For groups in the English-language market, the Commission has concluded that the current PNI requirements will be maintained, including the specific program categories, as well as the condition of licence requiring that at least 75% of PNI expenditures be dedicated to independent producers.[23]

35. As also highlighted in the Notice, several ownership changes have occurred within the designated groups since the implementation of the group-based approach. Most notably for the English-language market, Bell has acquired the assets of Astral Media and has divested itself of a number of services, and Corus acquired the assets of Shaw Media Inc. Given these changes, we would expect that the Commission would recalculate the applicable CPE and PNI requirements for the new group as it did, for example, with respect to the Astral group when its assets were purchased by Bell in 2013.[24] As it did in that instance, and pursuant to the Group Policy, we would expect that CPE and PNI would be recalculated based on historical spending of the previous three-year period, subject to the Group Policy statement that CPE would be 30% at a minimum.[25]

36. Given the above, the WGC understands that the approach under the Commission's current policies is to maintain the English-language group's CPE levels at at least 30% overall, as well as the CPE levels for each individual service as they currently are now. Group PNI requirements would be recalculated, as we will discuss in more detail shortly.

37. We were very disappointed, therefore, to see that Bell and Corus proposed significant *decreases* in CPE and PNI spending over the next licence term for their English-language groups. As summarized in the Notice, Bell proposed a group CPE of 27% (down from 30%), a CPE for conventional television of 22% (down from 26%), a standard CPE of 32% for discretionary services with over one million subscribers, and 10% CPE for discretionary services under one million subscribers. It proposed a PNI requirement for all groups of 5%. Similarly, Corus proposed a drop in group CPE from 30% to 26% and PNI level of 5%, despite having a combined 5% and an effective 12%[26] in the current (2011-2017) licence term.

38. The rationales proposed by Bell and Corus appear to boil down to the following: 1) The Create Policy has established the need for "standardization", within groups, as between groups, or both; and 2) The future is uncertain, and it will occur under a new regulatory framework, therefore the Commission cannot calculate CPE or PNI based on historical spending.

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[22] Para. 28.
[23] Para. 30.
[24] Broadcasting Decision CRTC 2013-310, paras. 206-210; Broadcasting Decision 2014-62.
[25] Para. 50-52; Broadcasting Decision CRTC 2011-441, para. 29. Notably, the Commission raised Astral's CPE above 30%, to 32%.
[26] Broadcasting Decision CRTC 2013-737, para. 103.

39. The WGC submits that the "standardization" argument is not in any way a persuasive rationale to support the large-scale decreases in CPE and PNI spending proposed by Bell and Corus. The WGC, in partnership with the Canadian Media Production Association (CMPA), the Directors Guild of Canada (DGC), and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), collectively, the English-language Production Group, have commissioned a study by Mario Mota of Boon Dog Professional Services Inc. of the impacts of the proposed CPE and PNI decreases in comparison to what we understand would be a straightforward implementation of the Group Policy (the Boon Dog Report).[27] As stated in the Boon Dog Report, if the 5% PNI level 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 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.

40. In addition to these impacts, in many programming categories—and, in particular, in drama and documentary programming, which form the core of PNI—broadcaster spending triggers other investments from public and private sources. In such cases, changes in broadcaster spending have a multiplier effect on overall production volume. We are aware of no publicly available data that quantifies the precise value of this multiplier, and it's likely the value would differ with respect to different programming categories. But for productions funded by the Canada Media Fund, English-language broadcasters provide between 25% and 30% of production financing on average.[28] Using the more conservative number, this would result in a multiplier of at least 3 for these programs. If this multiplier were applied to the losses to PNI alone from Bell and Corus, as calculated in the Boon Dog Report above, the total loss in production volume in the system would be $122.1 million for the one-year period studied.

41. This kind of major impact on Canadian programming levels would be incredibly detrimental to the Canadian broadcasting system, and it cannot be what the Commission meant when it referred to "maintaining" CPE and PNI requirements. Such an extraordinary impact must surely have an extraordinary justification. The WGC finds the reasons provided by Bell and Corus on the matter to be severely wanting.

42. One of broadcasters' stated reasons is "standardization" but, as we argued earlier in this submission, even after the Create Policy we do not have a completely standardized, homogenous broadcasting system in which all channels are identical content receptacles. There is still significant heterogeneity in the system, and standardization cannot and should not be pursued at all costs.

43. Further, even if standardization *is* a primary goal under the current regulatory framework, there is no reason why it should result in widespread decreases in programming spending from the current

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[27] *Analysis of Canadian Programming Expenditure and Programs of National Interest Proposals Filed by The English-Language Broadcast Groups as Part of Their Group Licence Renewal Applications*, Mario Mota, Boon Dog Professional Services Inc., August 2016. The report is appended to this submission.

[28] Canada Media Fund, Industry Consultation 2015, Focus Groups, Slide 15: http://www.cmf-fmc.ca/documents/files/about/ind-outreach/2015-16/consultation-tour-presentation-deck_2015-16.pdf

environment. “Standardization” simply means that like services—or all services—are treated similarly. If “industry average” CPE and PNI levels are desired, then that should be a true industry average, and thereby maintain spending at current levels. Bell and Corus are not proposing a standardized status quo. They are proposing standardized *declines*.

44. A close look at their proposals further suggests that they do not even accomplish standardization consistently. Bell argues for a standard CPE of 32% for discretionary services that either had a CPE requirement historically or have more than one million subscribers, which it says are “historical averages for the industry”.[29] For English-language conventional television, however, Bell ignores “industry averages” and instead proposes 22%,[30] which was the lowest CPE for conventional TV imposed in the 2011 licence renewals.[31] Bell does the same for PNI, again proposing the lowest-common-denominator PNI levels, without any reference at all to “industry averages”. The WGC submits that this is not a model for standardization or an “even playing field”—this is a model for a rush to the bottom for regulatory support for Canadian programming.

45. Corus, on the other hand, does not propose industry-wide levels for CPE. Rather, Corus focuses on its own services and appears to base its proposed CPE and PNI levels largely if not entirely on a subjective assessment of its own programming needs for the next licence term. Noting that “historical obligations do not represent an appropriate or reliable guide” for CPE,[32] on where the Corus Group will direct its CPE during the next licence term, Corus stated:

> Corus’ financial model reflects its CPE and PNI commitments for the next licence term on the basis of what we believed were the investments necessary to meet the needs of the Corus Group of services…[33]

46. The WGC submits that the Commission cannot determine CPE and/or PNI spending levels on such a basis. For one, it is contrary to the Group Policy, which clearly established historical spending as the appropriate benchmark. While Bell and Corus claim that events since the Group Policy have vitiated historical spending as a CPE/PNI calculation mechanism, a close reading of the Group Policy shows that it had already anticipated many of the trends now facing the industry—e.g. an increasingly on-demand environment and the challenges to conventional television[34]—and nevertheless found historical spending to be an appropriate way of setting regulatory requirements. Further, the Create Policy specifically stated that the fundamental characteristics of the Group Policy would be continued, and Commission was even *more* aware of the current environment then than it was in 2010. Indeed, the Create Policy established the very regulatory environment that Bell and Corus now point to as a reason to diverge from this aspect of the group-based approach. It is a bizarre argument indeed to say that the Commission must deviate from the group approach because of the policies that the

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[29] Application of Bell Media Inc., "Application for Renewal, 18 April 2016", Appendix C, para. 56. Note that we are not aware of information from Bell showing how they calculated “industry” averages, and therefore cannot analyze or verify the appropriateness of that calculation as an "industry average".
[30] *Ibid.* at para. 66.
[31] Broadcasting Decision 2011-441, para. 31.
[32] Application of Corus Entertainment Inc., " Responses to Request for Additional Information – May 30th, 2016", Appendix A, pg. 11.
[33] *Ibid.*, pg. 12.
[34] Para. 42.

Commission implemented in very same document(s) in which it said it would adhere to the group approach.

47. Both Bell and Corus point to financial challenges ahead for the sector. And while the WGC acknowledges the challenges ahead, we submit that these cannot be the basis for lowering CPE and PNI levels. For one thing, CPE and PNI are percentages of revenue, and therefore will automatically "adjust" downward if and when revenues decline. For another thing, revenue challenges have not fallen equally amongst every element within the broadcasting system. While conventional, over-the-air television is especially challenged right now, discretionary revenues are still growing.[35] Yet Bell, for example, emphasizes the problems with conventional when it argues for lower CPE/PNI obligations overall,[36] even though that argument only applies to one aspect of the system.

48. The WGC submits that the above proposals by Bell and Corus constitute an attempt to rewrite the Group Policy and the Create Policy in ways that differ fundamentally from what those policies actually say. The WGC submits that this is not the appropriate forum to reconsider these policies in the manner proposed by Bell and Corus. As such, the WGC submits that rather than reimagine what the Commission's policies could be with respect to CPE and PNI, broadcasters must abide by existing policies.

49. In our view, this means that average CPE levels for each of the English-language broadcasting groups must be at least 30%, unless a recalculation of historical spending for newly constituted groups demonstrates that CPE should be higher, in which case the group level should be set accordingly. Similarly, with respect to PNI, newly constituted groups should have their group PNI levels recalculated based on the new group composition.

50. With respect to Rogers' CPE proposals, while they appear encouraging, especially in light of the proposals of Bell and Corus, the fact that Rogers is seeking a reduction in CPE levels for four of the six discretionary services that it proposes be part of its designated group warrants close scrutiny and analysis by the Commission. Revenues for Rogers' discretionary services are generally increasing, but revenues for the City stations are decreasing and are projected to continue decreasing throughout the next licence term. If this continues, any overall increases to CPE in the short term as a result of Rogers' proposal may be blunted or even reversed over the longer term.[37] We submit that this is an issue to consider with regard to any proposal that contemplates identical CPE levels across all services within a group.

51. Regarding recalculation of PNI, as described in more detail in the Boon Dog Report, our analysis indicates gaps and potential inconsistencies in the data that prevents us from doing a full analysis ourselves. However, our preliminary calculations suggest a new PNI for Bell of approximately 8% and for Corus of approximately 8%.[38] We urge the CRTC to do its own calculation for Bell, Corus, and Rogers based on the complete data available to it, which may not currently be on the public record.

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[35] News Release, CRTC, "Specialty services increase investment in Canadian programming", June 23, 2016: http://news.gc.ca/web/article-en.do?nid=1089779

[36] Application of Bell Media Inc., "Application for Renewal, 18 April 2016", Appendix C, para. 64.

[37] See Boon Dog Report, Table 15.

[38] As stated in the Boon Dog Report, there is insufficient data to accurately estimate the appropriate PNI for the Rogers group.

We submit that such a calculation should reflect, at the very least, status quo with respect to real PNI spending levels across all the English-language broadcast groups. In other words, there should be no reason for real PNI spending across the three groups to drop simply due to this renewal proceeding.

52. The WGC would also reiterate our comments earlier in this submission, that CPE and PNI levels were initially set in 2011 based on a historically low—and, from a policy perspective, suboptimal—baseline. As such, we urge the Commission to look closely at increasing these requirements as a percentage, particularly with respect to PNI.

53. It is worth noting again in this context that CPE and PNI levels are set as a percentage of revenue. As such, they will automatically increase or decrease in dollar-value with increases or decreases of broadcasting revenue. While the WGC accepts this feature of the CPE/PNI regime, it's important to recall that in an environment of declining broadcasting revenue, the percentage mechanism will *automatically* reduce the minimum spending required on Canadian programming. As such, further decreasing the percentages themselves, as proposed by Bell and Corus, results in a "double whammy", since both the numerator and the denominator will decline. This would not fulfill the Commission's objective of "stable, continued support for the creation of Canadian programming" as stated in the Group Policy. Conversely, *raising* CPE and/or PNI percentages would not necessarily increase the dollar-value of production spending, but could simply result in status-quo levels of activity.

Original, first-run/New Commissioned programming

54. Linear television has long been comprised of both new programming and reruns. Particularly with the proliferation of cable channels in the late 1990s, the programming strategies of most broadcasters involve a mix of "premiere" programming, repeat or "catch-up" airings of that programming, generally in the months following its premiere, and, increasingly, "library" programming, consisting of older shows broadcast for their "nostalgia" value and/or because they represent "evergreen" content that doesn't tend to become stale in the minds of its target audience.

55. There is a place for all of this programming in the current broadcasting system, however the Commission has long distinguished between new programming and older programming, and tended to prefer the value of the former for the purposes of achieving the outcomes of the *Broadcasting Act*. Most recently, in the Create Policy, the Commission stated the following, in the context of reviewing broadcast exhibition requirements:

> Moreover, quotas can also have unintended detrimental effects. Specifically, data from program logs submitted to the Commission shows that on average well over 50% of Canadian programming broadcast on all services in both English- and French-language markets is repeated on the same service or "recycled" from other services. Often a particular episode of a program is repeated numerous times over the course of a day, week, month and even over a period of many years. For some services, these amounts are far higher and more than 90% of Canadian programming is repeat or recycled programming. While this may be a viable business model for some services, <u>the Commission is of the view that original first-run Canadian productions add more value to</u>

> the system; the excessive repetition and recycling of programming appears to do little to achieve the objectives of the Act.[39] [Emphasis added]

56. This was not the first time the Commission stressed the importance of creation of new programming. In the Group Policy, the Commission said:

> 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 continually create attractive new Canadian programs.[40] [Emphasis added]

57. The WGC agrees that original first-run Canadian productions add more value to the Canadian broadcasting system, and we agree with the Commission's emphasis on new program creation in the Group Policy.

58. Focusing on programming expenditures over exhibition was one important way for the Commission to encourage the production of new Canadian programming creation. But the Commission appears also to have recognized that expenditure obligations on Canadian programming can be imprecise in this respect, because Canadian programming expenditures can include the purchase of already-existing, "library" content.

59. Some context on the "lifecycle" of production spending may be useful here. A new production generally begins life when it is "green-lit", which is when a broadcaster formally approves the project to move from development into production, and commits to finance a portion of its production costs. In Canada, broadcasters rarely finance 100% of production costs, so producers generally complete the financing of the project's budget from other sources, usually including public sources such as the Canada Media Fund and production tax credits. However, for the purposes of this discussion, we will focus on the broadcaster's financial contribution, since this is the subject of CPE and PNI spending that is at issue in this proceeding.

60. Broadcaster financing is often crucial to cash-flow the production process. In other words, in order for the producer/production company to pay ongoing expenses for cast, crew, equipment, locations/sets, and other production costs in a timely manner, broadcasters must pay out their financial contribution before and during the production process itself.[41] This usually occurs, in a series of payments to the producer/production company made throughout the production process and which are based on key milestones of production. For example, a certain portion of the broadcaster's financial contribution may be paid at green-light, another portion may be paid at the commencement of principal photography, another portion once a preliminary edit ("rough cut") of the production is completed, and another, usually final, payment is made upon delivery to and acceptance by the broadcaster of the completed program in a ready-to-broadcast state. Depending upon the size and

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[39] Para. 191.

[40] Para. 7.

[41] Producers can also cash-flow productions using bank loans or, if they have the ability, through their own financial reserves. Financing from some other sources, such as the Canada Media Fund, is generally also released in stages over the course of production, while yet others, such as tax credits, are not and therefore must be financed/borrowed against until they are paid out after the production is completed.

complexity of the production, all of these payments may occur over the course of a few months, give or take, but rarely if ever do they occur over a period of longer than a year. From the "cash out-of-pocket" perspective, therefore, 100% of a broadcaster's spending on Canadian programming—i.e. spending that would constitute CPE or, in the case of spending on the applicable genres, PNI—occurs within a single year.

61. In exchange for some or all of their financial contribution, broadcasters obtain the right to broadcast the production, usually for a set period of time in the territory that the broadcaster serves—i.e. a broadcast licence. The duration, or term, of a broadcast licence is typically several years, and often in the 5-7 year range. During this term, broadcasters have the right to air the program in question, and generally do so depending on their programming strategy and the ultimate success of the show. As the WGC understands it, for accounting purposes, broadcasters amortize the cost of their financial contribution over the licence term. This practice is explained by Corus as follows:

> The following is Shaw Media Inc.'s accounting policy for program rights and has been extracted from the audited consolidated financial statements as at and for the years ended August 31st 2015, 2014 and 2013:
>
> *Intangibles*
> *Program rights represent licensed rights acquired to broadcast television programs on the Company's conventional and specialty television channels and program advances are in respect of payments for programming prior to the window license start date. For licensed rights, the Company records a liability for program rights and corresponding asset when the license period has commenced and all of the following conditions have been met: (i) the cost of the program is known or reasonably determinable, (ii) the program material has been accepted by the Company in accordance with the license agreement and (iii) the material is available to the Company for telecast. Program rights are expensed on a systematic basis generally over the estimated exhibition period as the programs are aired and are included in the operating, general and administrative expenses.*[42]

62. It is the WGC's understanding that broadcasters generally report CPE and PNI expenditures as per their amortization of costs under their accounting policy. In other words, despite having actually expended 100% of their financial contribution to a given television production in a single year, broadcasters will amortize or "spread out" that spending over the duration of the broadcast licence term, and that this is reflected in annual CPE and PNI expenditures that are reported to the CRTC.

63. Both "cash out-of-pocket" spending and amortization of spending on new production ultimately refer to the same activity—spending on the *creation* of *new* Canadian programming. However, there is a third category of spending that does not contribute to the creation of new Canadian programming, and that is spending on the acquisition of existing, or "library" programming. In the case of library acquisitions, the broadcaster in question does not green-light production, nor does it contribute financially to the production of the program. Rather, such programming is acquired after its production financing has been completed from other sources, and often after it is already produced. As the WGC understands it, broadcaster spending on acquisitions of Canadian library content may

[42] Application of Corus Entertainment Inc., "Responses to Request for Additional Information – May 30th, 2016", Appendix A, pg. 20.

also count towards that broadcaster's CPE/PNI expenditure requirements. Presumably, such spending is also amortized over the licence term of the program, but for the WGC's purposes this amortization is not of concern for the reasons that follow.

64. Given all of the above, the WGC makes the following requests and proposals. First, we seek confirmation from the Commission that the above understanding is correct, in particular, that: a) in a given year, broadcasters' reported CPE and PNI spending reflects their amortization of programming costs over the licence term, or some other "exhibition period", as opposed to actual cash out-of-pocket spending; and b) whether or not "acquisitions" as described above in paragraph 63 above are included in broadcasters' reported CPE and PNI spending.

65. Second, the WGC understands that the method of amortization of programming costs is not consistent between broadcast groups. Corus made the following statement in this respect:

> First, information relating to first-run and new commissioned programming has never been filed with the Commission before and when applicants sought clarifications regarding how to define first-run and new commissioned programming, the Commission stated in a letter dated March 11th, 2016 that:
>
> > “It is up to the Groups to inform the public record as to the manner in which they have been reporting their respective PNI expenses and to explain for the record how each has treated the definitions provided.”
>
> This means that each individual media group could report their first-run and new commissioned programming expenses in a different manner as long as they explained how they did it. In fact, this is what occurred. The various media groups did not develop any consensus on how to define these terms and calculate these expenses. As a result, the groups prepared this information according to own their individual practices.
>
> Therefore, without standardization on PNI reporting, the information on the public record is not directly comparable as between the various media groups.[43]

66. Rogers expressed a similar view.[44]

67. As such, the WGC requests that the Commission establish a standardized definition or definitions of "original, first-run" and/or "new commissioned" that applies to all broadcasters, so that data with respect to these concepts can be compared to each other. Such a definition must encompass the actual amortization schedule or schedules used. The WGC understands that a broadcaster could elect to "front load" the production costs on an amortization schedule, on the basis that programming rights are more valuable when the program is newer;[45] alternatively, a broadcaster could elect to

[43] Application of Corus Entertainment Inc., "Responses to Request for Additional Information – June 10th, 2016", Appendix A, pg. 23.
[44] Rogers Media Inc. – Licence renewal applications – Fourth Response to Deficiency Questions (Application no. 2016-0009-9), pg. 7.
[45] E.g. For a $1 million program cost amortized over a 5-year term, the following amortization schedule might apply: Year 1 - $500,000; Year 2 - $200,000; Year 3 - $150,000; Year 4 - $100,000; Year 5 - $50,000.

spread the costs out over the term in equal increments.[46] Understanding how costs are amortized will assist the WGC, and the Canadian public, with understanding exactly what reported CPE and PNI expenditures mean. Further, we propose that the Commission consider the relative merits of a "front loaded" amortization schedule over other alternatives, since the former may more closely reflect actual, out-of-pocket spending and therefore be more responsive to changes in production spending year-over-year.

68. Further, standardized definition(s) of program spending should distinguish between spending on new production, however amortized, and spending on "acquisitions" as described above in paragraph 63. From the WGC's perspective, this is crucial information to understand just how much CPE and PNI spending contributes to the *creation* of *new* Canadian programming, which the WGC understands to be the ultimate goal of the Commission's policies with respect to Canadian programming. We believe it is essential that program amortization of new production and acquisition spending not be confused with each other, since they apply to very different things.

69. The WGC asks that the above definitions be standardized as soon as possible, and that English-language groups be required to file CPE and PNI spending data in conformity with these definitions in time for it to be considered in this proceeding—preferably in advance of the public hearing phase commencing on November 28, 2016. The WGC submits that the level of spending on the creation of new Canadian programming is central to the review of the impacts of the Group Policy and of how broadcasters are meeting its objectives. We submit that if the data shows that broadcaster CPE/PNI spending is unduly weighted towards acquisitions/library content, at the expense of new Canadian programming, the Commission should impose minimum spending requirements specifically on the creation of new Canadian production.

BravoFACT/MuchFACT

70. In its application, Bell has applied to delete the conditions of licence for Bravo! and Much regarding contributions to Bravo!FACT and MuchFACT respectively. The WGC submits that these contributions are effectively CPE/PNI contributions, and if Bell wishes to eliminate these particular contribution regimes then their value should be added to the historical calculation of CPE and PNI that Bell must meet during the next licence term. In particular, given our understanding of the nature of the content supported by Bravo!FACT, we submit that this contribution, if eliminated as a condition of licence for Bravo!, must be included in the calculations of Bell's PNI for the next licence term.

Group Composition

71. The WGC does not object to any of the English-language group's proposals for inclusion within their designated group.

[46] E.g. For a $1 million program cost amortized over a 5-year term, the following amortization schedule might apply: Year 1 - $200,000; Year 2 - $200,000; Year 3 - $200,000; Year 4 - $200,000; Year 5 - $200,000.

Script and Concept Development

72. In the Notice, the Commission stated its intention to, among other things, "consider the licensees' proposals relating to script and concept development…"[47] The Commission noted the importance of script and concept development over a year ago in the Create Policy,[48] and raised script and concept development with licensees during the application process earlier this year when it asked them about their plans and activities in this respect. Given both the importance of the issue and the Commission's clear interest in it, the WGC was disappointed that the question of development received relatively little attention from the English-language licensees, and none of them put forward concrete, substantive proposals on the subject.

73. Simply put, script and concept development is an essential component to making high-quality television programming, especially with respect to "Category 7" drama and comedy programming. It is essential because the script itself is essential, since the script sets out characters, story arc(s), themes, tone, and virtually every word of dialogue spoken on screen. The great majority of what people talk about when they talk about their favourite TV show was initially created by one or more writers and set out in a script. The current "Golden Age of TV" has been largely attributed to the rise of the showrunner—a writer/producer role in which the *creative* control of a dramatic television production resides. It is the showrunner and the screenwriters working with him or her that effectively *creates* the show. And it is during the development process that the most important resource for screenwriters is either provided or not: the time to make the script the best it can be.

74. The importance of time in the development process cannot be overstated. While the creative process is often popularly characterized as consisting of flashes of inspiration, the reality is that creative work—and, in particular, writing television scripts—is often laborious and time-consuming. Yet it is crucial to a quality result. WGC members regularly report that time and resources to develop is essential to achieving quality. We can also see that in other jurisdictions. For example, Christian Rank, Executive Producer at TV2 in Denmark, has ascribed a large reason for the success of "Scandi-drama" and "Nordic noir" to the broadcast structure in the region, in which broadcasters commit to production up to four years in advance, which results in a nearly 4-year development process focused heavily on the writing. This creates "a very large amount of trust from the broadcaster towards the writer," and is referred to as the "One Vision" approach—the writer's vision—to Danish television.[49] This approach has resulted in major domestic and international successes like *Borgen* and *The Killing*, from a country with a population that is one-sixth the size of Canada's. The WGC believes strongly that time and resources in script and concept development are fundamental requirements for high-quality Canadian dramatic and other scripted programming.

75. Unfortunately, however, we in Canada appear to be drifting in the opposite direction. As we said in our submission to the Commission's *Call for comments on the Commission's policies relating to Certified Independent Production Funds*,[50] the nature of script and concept development has changed

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[47] Para. 38.
[48] Para. 122.
[49] "Best-in-Class Models for International Success", CMPA Prime Time in Ottawa, February 5, 2016: https://www.youtube.com/watch?v=oKVc764cpDU&index=5&list=PL7hEq1gWhvcLsPa6dMLLv-Zbug0LdenKM (15:39 – 17:45).
[50] Broadcasting Notice of Consultation CRTC 2015-467.

significantly in English-Canada over the past 5-10 years. Previously, when a writer and/or producer came up with an idea for a television program, they pitched that idea to a broadcaster, orally or with minimal supporting written material. This was a *concept* pitch and, if the broadcaster liked the concept, a development agreement between the producer and broadcaster would be entered into to further develop the idea, often financed by the broadcaster or by the broadcaster in conjunction with a funding body.

76. This model no longer predominates. Today, broadcasters expect significant development materials as part of the initial pitch. Whereas before, broadcasters would have received an oral description of the project, now they want to see fully developed treatments, scripts, bibles, or even produced material such as "sizzle reels" showing the visual look and feel of the program. This effectively front-loads development activity onto the producer and, in many cases, in turn onto the writer him or herself. Broadcasters are investing less of their own money in development, expecting that much if not all of the work will be borne by the writer and/or producer. This in turn translates into pressure on writers to work for free. The WGC surveyed its membership in 2013, and found a significant number of screenwriters, including very senior ones, had been pressured to perform work for free. For example, 72% of all respondents working in television said that they had provided uncompensated work before signing a writing/development contract with a producer. While some self-directed work may occur at this stage, 54% of this work was "always" or "often" at the request of a producer, either for a new pitch or to rewrite an existing pitch. Even when a contract between writer and producer is signed, the pressure to work for free often remains, with 44% of television writers surveyed reporting that they had worked for free. 63% of those writers said that the pressure to provide free work was coming from the producer, not from themselves. This is not a sustainable model.

77. The result is underdeveloped programming, and screenwriters carrying the burden of financing or co-financing the development phase. The former leads to poorer-quality programming. The latter leads to scriptwriters who carry a portion of the risk of development, which they are not equipped to carry and often do so without the chance of reward generally associated with financial risk. Screenwriters, like everyone, have mortgages and bills to pay—they cannot live on free, and they cannot effectively interim finance development. As a consequence, many senior screenwriters do their best to avoid this situation by working in story departments on established productions, or writing scripts "on spec" that they in turn own and control. Having invested their own sweat equity in the project, screenwriters are more likely to turn to the larger, better capitalized and less risk-averse international marketplace when it comes time to sell, bypassing the Canadian broadcasting system altogether. This would be the very definition of a lost opportunity.

78. In addition to this specific phenomenon, the WGC believes that for a long time the Canadian industry has tended to "rush to production", and in the process given development too short a shrift. While the ultimate cause(s) of this may vary, it is likely that both broadcasters and producers put most of their focus on the production phase, though perhaps for different reasons. For producers, production triggers key payments of licence fees and production funding, which is a crucial source of cash flow. For broadcasters, it is production spending that ultimately generates the lion's share of CPE, exhibition, or other regulatory requirements.

79. As such, the WGC believes it is time to make minimum spending by broadcasters on script and concept development a regulatory requirement. We propose that the Commission require, by condition of

licence, that a minimum amount of broadcaster spending be to directed to script and concept development activity.

80. Unfortunately, at this time the WGC does not have the relevant data to assess what level of spending is currently directed to development. As such, we are not currently in a position to propose a specific condition of licence with a specific level of minimum spending. So we are asking the Commission to obtain and make public, for the purposes of this proceeding, the spending of each of the designated English-language groups on script and concept development, broken out annually for each year of the current (2011-2017) licence term that data are available. Since the essential component of script and concept development is *writing*, we ask that the Commission ensure that such data accurately reflects the *script and concept* aspect of development spending, and is not unduly combined with other pre-production costs that are unrelated, or only tentatively related, to script and concept development.

81. The WGC's ultimate goal is to improve the quality of Canadian programming by increasing the quality and quantity—and the two are inextricably linked—of script and concept development activity. Following the proven success of the Danish "One Vision" model, we also believe that the focus should be on Canadian screenwriters. As we said in our submission to the Commission's *Call for comments on the Commission's policies relating to Certified Independent Production Funds*, the WGC would like to see the Canadian broadcasting system become more creator- and talent-driven. Broadcasting is ultimately a business, and business concerns will always play an important role in how it operates. But it's also a creative sector, and creativity *is* our business. In the WGC's view, English-Canadian programming production in the 21st century is over-rotated towards the mechanics of business deals, too often at the expense of creativity. WGC members who work as writer-creators and showrunners in other jurisdictions, mostly notably in the United States, detect a different attitude there towards creators, and a different focus on creative risk-taking. Those jurisdictions see their business interests as resting on the foundation of well-executed creative vision. Canada has no shortage of talent and expertise, working in all parts of the broadcasting system. Nevertheless, wherever a "Golden Age of Television" has dawned, in our view it has done so based on creative vision and investment in the artists who realize that vision. Canada must build upon a similar strategy. The WGC submits that regulated script and concept development spending must reflect these principles.

Diversity of Programming

82. As previously noted, in the Create Policy, the Commission eliminated the genre exclusivity policy.[51] As the Commission stated in the Create Policy, one of the two objectives of the genre exclusivity policy was to "ensure a diversity of programming genres" in the Canadian broadcasting system.[52] In eliminating genre exclusivity, the Commission determined that the policy was no longer working effectively and that, in a system characterized by maximum choice and flexibility for consumers, the market will ensure programming diversity.[53]

83. Nevertheless, the Commission did not divest itself entirely of an interest in diversity of programming in the Canadian broadcasting system. To the contrary, the Commission noted the programming categories comprising PNI, and said that it, "considers that PNI expenditure requirements continue to

[51] Paras. 242-256.
[52] Para. 233.
[53] Para. 250.

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."[54] The Commission went on to state a 3-part test for adding or removing PNI categories.[55] And the Commission singled out children's and youth programming, which it considers "to be an integral part of the broadcasting system," and began a process to establish a new reporting framework to monitor this programming,[56] which was later concluded in Broadcasting Regulatory Policy 2015-323. The Commission also expressed concern for diversity of programming in establishing new criteria for new and existing national news services.[57]

84. The Commission has continued this concern in the Notice of the present proceeding as follows:

> In accordance with the objectives of Broadcasting Regulatory Policy 2015-86 and section 3(1)(i) of the Act, the Commission has asked the groups to describe their plans with respect to offering diversified programming, including a significant contribution from the Canadian independent production sector, in regard to, among other things:
>
> - programming for children and youth;
> - regional production;
> - original, first-run programming;
> - feature films; and
> - programming from official language minority communities (OLMCs).
>
> The Commission intends to examine these plans and to consider the necessity and relevance of implementing regulatory measures in order to ensure that the television system offers diversified programming likely to meet the interests and needs of all Canadians, including youth, Canadians living in the regions, and members of OLMCs.[58]

85. Given the above, it seems clear that while the Commission has eliminated the genre exclusivity and sought to streamline the licensing process,[59] and expects program diversity to be achieved to a large extent by relying on market forces, the Commission has not renounced its role in ensuring diversity of programming,[60] nor does it envision a regime in which all broadcasting services are treated identically. The latter point is illustrated in reference to the Commission's previously noted comments in the Create Policy on exhibition requirements for children's and youth programming. [61]

86. As such, the WGC submits that even after the Create Policy, diversity of programming is still important, not all broadcasting services are identical from a regulatory perspective, and existing services still have an identity and brand. Indeed, broadcasters themselves appear to agree. When Corus was asked about diversity of programming, it responded that "diversity amongst one's services has never been

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[54] Para. 288.
[55] Para. 292-297.
[56] Paras. 298-299.
[57] Paras. 257-275.
[58] Paras. 36-37.
[59] Create Policy, paras. 300-310.
[60] Assuming that this would even be possible, considering the provisions of section 3(1)(i) of the *Broadcasting Act.*
[61] Para. 196.

more critical", and then devoted 10 pages and over 3,000 words to outlining the brand-identities of their services, and noting, "It is within the strength and individualities of our brands that programming diversity among our services is and will be established over the next licence term."[62]

87. In this context, the WGC opposes the proposal by Corus to delete the following condition of licence for the service TELETOON/TÉLÉTOON:

> 3.(b) In each broadcast day, the licensee shall devote at least one hour between 8 p.m. and midnight to the broadcast of Canadian programs.

88. The WGC submits that while this condition of licence may appear to be a "mere" exhibition requirement, and recognizing that the Commission determined in the Create Policy to reduce and standardize exhibition requirements generally, TELETOON/TÉLÉTOON's condition of licence 3(b) is in fact about the creation of a specific type of programming—namely, edgy, adult-oriented animation that is best suited to be aired in the 8 p.m.-to-midnight timeslot on an animation-branded service such as TELETOON/TÉLÉTOON. As such, the issue goes to the question of diversity of programming, and therefore falls under the exception to general exhibition requirements set out by the Commission in paragraph 196 of the Create Policy. We submit that Corus has confirmed that it intends for TELETOON/TÉLÉTOON to remain an animation channel.[63] As such, we submit that the current condition of licence 3(b) is entirely consistent with Corus's intentions for the service. If at some point in the future Corus wishes to change TELETOON/TÉLÉTOON's identity and brand, it could apply to the Commission for an amendment of licence with respect to 3(b).

89. The WGC acknowledges that the question of diversity of programming becomes a bigger challenge in the wake of the elimination of genre exclusivity. Nevertheless, we strongly believe that it is a value worth continuing to pursue, particularly considering the requirements of the Act.

Conclusion

90. The WGC is pleased to provide comments in this proceeding, and we look forward to reading the comments of others and to participating in the public hearing phase in the fall.

Yours very truly,

Maureen Parker
Executive Director

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[62] Application of Corus Entertainment Inc., Group Issues, April 18, 2016, pg.37-48.
[63] Corus has proposed a description of the service as follows: "A national discretionary English- and French-language programming service for children, youth and adults providing primarily animated series and movies." [Emphasis added]. See application of Corus Entertainment Inc., Discretionary Services, April 18, 2016, Appendix F, pg. 283.

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