Writers Guild of Canada

February 15, 2018 **Filed Electronically**

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

Dear Mr. Seidl:

**Re: 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).**

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.

Given the WGC's nature and membership, our comments are limited to the applications of those broadcasters who generally commission programming that engages Canadian screenwriters, and in particular those who significantly invest in programs of national interest (PNI).

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

**Executive Summary**

ES.1 The Commission set out its general approach to Canadian programming expenditure (CPE) and PNI requirements in Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming* (the Create Policy). In it, the Commission was clear that CPE was a central pillar of the regulatory policy framework for Canadian television broadcasting, and that the guiding principle for setting CPE levels for independent broadcasters would be historical spending levels. With respect to PNI, the Commission stated 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, and that

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current requirements would therefore be maintained. Minimum PNI levels, like CPE, have also been calculated on the basis of historical spending on PNI. As such, the Commission's approach to setting PNI levels has been consistent with its approach to CPE.

ES.2 Given the above, the WGC submits that the approach to setting CPE and PNI levels for the broadcasters dealt with in these applications is simple: CPE requirements must be set at their historical spending levels, as a percentage of revenue, or 10%, whichever is greater; and PNI levels, where applicable, must similarly be set at historical spending levels. We submit that anything less than that, for any licensed service, is contrary to the Create Policy, both in letter and spirit, as well as inconsistent with the Act.

ES.3 With respect to DHX Television Ltd. (DHX), the WGC objects to the proposal to combine English-language and French-language services in the same designated group for the purposes of a group-based licensing approach. The WGC questions the value of an English-language "designated group" consisting of only two services. However composed in reference to a group-based approach, CPE and PNI requirements for DHX's services must be based on historical levels, consistent with the Create Policy discussed above. Regarding CPE, this would appear to mean: a) a 3-service group CPE requirement of 20% of the previous year's broadcasting revenues; b) a 2-service, English-language group CPE requirement of 21%; or, c) individual CPE requirements of 22% for Family Channel, 11% for CHRGD, and 10% for Télémagino. Regarding PNI, this would appear to mean: a) a 3-service group PNI requirement of 15% of the previous year's broadcasting revenues; or, b) an individual PNI requirement for Family Channel of 17% (the WGC is unable to calculate historical PNI spending for a 2-service English-language group). The WGC suggests the Commission require DHX to file benefits reports annually as part of its licence renewal decision.

ES.4 With respect to Blue Ant Media Inc. (Blue Ant), it has proposed a standardized CPE level of 21% for each of the eight discretionary services within the Blue Ant group, but we are aware of analysis demonstrating Blue Ant's group 3-year average CPE was 31%. This appears to mean that Blue Ant spent significantly more on CPE over these three years than they were required to by regulation. If accurate, we applaud Blue Ant for demonstrating a significant commitment to the production and presentation of Canadian programming, and we also believe this demonstrates a capacity to invest in Canadian programming above the 21% group minimum. Regarding PNI, Blue Ant has not filed, nor has the Commission required it to file, data showing what it spent on PNI over the current licence term. Moreover, the Group PNI reports filed by Blue Ant and available on the CRTC's website appear to be inaccurate. As such, interveners do not have access to the necessary data to assess Blue Ant's historical spending on PNI over the current licence term and whether it has met its regulatory obligation regarding PNI and if the current and proposed PNI spending requirement remains appropriate for the next licence term.

ES.5 With respect to Rewind and Silver Screen Classics, these services should be subject to minimum CPE requirements of 12% and 10%, respectively, of their previous year's revenues. CHCH-DT should be subject to a minimum CPE requirement based on its historical spending.

ES.6 With respect to Knowledge, the WGC supports its renewal as proposed in its application. The WGC supports Knowledge's mandate and activities as a public broadcaster, and encourages Knowledge to continue its positive contribution to the production and distribution of original Canadian programming, including with regard to PNI.

**CPE and PNI Requirements for Independent Broadcasters**

1. The Commission set out its general approach to Canadian programming expenditure (CPE) and PNI requirements in Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming* (the Create Policy).

2. With respect to CPE, discussed at paragraphs 213-225 of the Create Policy, 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.[1]

3. Regarding independent broadcasters—i.e. those not part of the large private broadcast groups subject to the Broadcasting Regulatory Policy CRTC 2010-167: *A group-based approach to the licensing of private television services* (the Group Policy) and subsequent decisions—the Commission stated:

    Since independent over-the-air stations will have a CPE requirement for the first time, the appropriate level of CPE will be set at the time of licence renewal, based on historical levels of expenditure. It will take into account any relevant outcomes of the proceeding reviewing local and community programming as announced in Broadcasting Regulatory Policy 2015-24.

    With respect to English- and third-language discretionary services, CPE requirements will be implemented for all services with over 200,000 subscribers. As discussed later in this document, all discretionary services under 200,000 subscribers will be exempt from licensing under a new exemption order. CPE for licensed services will be established in a case-by-case manner and based on historical levels. However, given the great variation in the revenues and expenditures of discretionary services and the fact that certain services make little or no expenditures on Canadian programming, the minimum level of CPE applied will be 10%. In the Commission's view, this level represents an attainable floor for any discretionary services that still ensures some contribution to the creation and

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

presentation of Canadian programming. Currently, 19 services have CPE of less than 10%, with an average of 5%.[2]

4. The Commission was therefore clear that CPE was a central pillar of the regulatory policy framework for Canadian television broadcasting, and that the guiding principle for setting CPE levels for independent broadcasters is historical spending levels, subject to the above-noted criteria.

5. With respect to PNI, 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.
>
> 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 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.[3]

6. Minimum PNI levels, like CPE, have also been calculated on the basis of historical spending on PNI.[4] As such, the Commission's approach to setting PNI levels has been consistent with its approach to CPE.[5]

7. Given all of the above, the WGC submits that the approach to setting CPE and PNI levels for the broadcasters dealt with in these applications is simple: CPE requirements must be set at their historical spending levels, as a percentage of revenue, or 10%, whichever is greater; and PNI levels, where applicable, must similarly be set at historical spending levels. We submit that anything less than

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[2] *Ibid.* paras. 220-221

[3] *Ibid.* paras. 288-289

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

[5] 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 levels.

that, for any licensed service, is contrary to the Create Policy, both in letter and spirit, as well as inconsistent with the Act.

**DHX Television Ltd.—Family Channel, CHRGD, and Télémagino**

*Designated Group Status and Composition*

8. DHX Television Ltd. (DHX) proposes that:

> …the Family Services be granted "group" status and obtain the same flexibility to share obligations across our portfolio of regulated properties as has been granted to the larger groups. This approach would ensure that should audiences and revenues ebb and flow between DHX properties over the next licence term, we are better equipped to place Canadian programming resources where they will have the most beneficial effect. More specifically, it would afford us the same flexibility granted to the major players in the Canadian broadcasting system to share CPE and PNI across the programming services in the DHX group. [6]

9. DHX's "Family Services" are comprised of three services: Family Channel, CHRGD, and Télémagino. Family Channel and CHRGD are English-language services; Télémagino is a French-language service.

10. The WGC objects to the proposal to combine English-language and French-language services in the same designated group for the purposes of a group-based licensing approach. Firstly, as noted by the Commission in its letter to DHX dated September 13, 2017, and referenced in DHX's response dated September 19, 2017, in the Create Policy and in the Group Policy the Commission specified that, "for groups operating French- and English-language services, each language group operate under different conditions. As such, they would be treated separately and may have distinct requirements."[7] The WGC agrees, and further notes that section 3(1)(c) of the Act states that English- and French-language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements. While DHX cites the former Astral Media group as a precedent for the inclusion of English and French services in the same group,[8] the Astral group: a) was a response to the unique challenges of adapting the Group Policy to a major (then) new change of ownership and control; and, b) no longer exists, as designated groups have become much more clearly delineated along official-language lines.

11. Secondly, there are clear disadvantages in mixing English and French services in the same designated group. As discussed above generally, and in further detail below, CPE and PNI requirements are in reference to historical spending. At the same time, designated groups are permitted to "transfer" spending amongst and between services within the group. A "mixed" group would allow spending that was calculated on, and is appropriate to, French-language services to be directed to English-language services, or vice versa.

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[6] Licence Renewal Application for Discretionary Services under the Control of DHX Television Ltd., APP - Doc3 - Appendix 1 - Supplementary Brief, pg. 14-15.
[7] DHX, Reply to Info Request 2 Family CHRGD Telemagino, September 19, 2017, pg. 1. Also see the Create Policy at para. 218.
[8] DHX, Reply to Info Request 2 Family CHRGD Telemagino, September 19, 2017, pg. 2.

12. Moreover, there are clear challenges in terms of monitoring and compliance, not only for the CRTC but also for industry stakeholders and the public. For example, while the Commission can and has required broadcast groups to report CPE and spending on PNI by language in some reporting, it has not, to our knowledge, required groups to also break out prior year revenues by language that would allow stakeholders to do proper spending analyses.

13. If DHX does not combine English and French services within a designated group, this leaves the possibility of creating a group comprised of only two English-language services, while renewing the French-language service individually. The WGC questions the value of a "designated group" consisting of only two services. When the Commission approved a "modified group-based licensing approach" for the services of Blue Ant Television Ltd. and Blue Ant Media Partnership—the primary precedent for a group-based approach to independent broadcasting services—it did so for eight services, including two Category A and six Category B services.[9] Further, these services had a range of existing CPE requirements at the time, ranging from 53% (travel + escape) to 10% (EQHD, HIFI, Oasis HD and radX), with several services in between. In that context, the Commission was confident that, "even with the flexibility to transfer all of its CPE requirements among its services, Blue Ant Group will continue to make appropriate expenditures on Canadian programming for all of its services."[10] It is not clear that the same would apply to a two-service, English-language DHX group where one service has no current CPE obligations and has spent as little as 6.3% of its revenues on Canadian programming in one of the last two years for which we have data.

14. The WGC is also concerned about the impact that such a small group may have on CPE and PNI levels for these services in the medium-to-long term. Calculating group CPE and PNI levels necessarily involves reaching an average of historical spending of all the services in the group. This, in turn, means that services with higher historical spending levels brings that average up, while services with lower historical spending levels pulls that average down. In the Create Policy, the Commission clearly recognized that, "not all current Canadian programming services will be successful in the new television environment of the future."[11] It is generally recognized that it is very likely the smaller services that are more vulnerable in that television environment, and to date that has proven to be the case. In the unfortunate scenario in which CHRGD is used to establish a two-service "DHX group" CPE and PNI levels, only to be shut down shortly thereafter, a key impact will have been to pull down Family Channel's CPE and PNI from where it would have been as a standalone channel, before exiting the group and taking its revenue contribution with it. Such an outcome is technically possible for any designated group, but we submit that the risk—and the relative impact—of that scenario is even greater for very small groups like the one proposed by DHX.

15. Finally, we submit that the combination of CHRGD and/or Télémagino to Family Channel does not materially "strengthen" the group of services, as claimed by DHX. DHX argues that:

> Linking the services together as a group provides greater opportunities for the production of higher quality original content for the smaller services, especially Télémagino. On its

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[9] Broadcasting Decision CRTC 2013-465.
[10] *Ibid.*, para. 14.
[11] Create Policy, para. 216.

own, as a discretionary Category B service, Télémagino does not have sufficient distribution revenue to support higher-value original productions.[12]

16. However, nothing prevents DHX, as the corporate owner of these services, from combining their revenues on its own to help support higher-value original productions. The group-based approach allows broadcasters the added flexibility to *meet* CPE/PNI requirements, but it is not necessary for broadcasters to *spend* more in CPE/PNI. DHX's "strength" as the owner of multiple broadcasting services comes at the corporate level—in actually owning and controlling the services, and being able to combine their revenues to make greater investments in programming. It doesn't need "regulatory permission" to do so by virtue of being designated as a group under the Group Policy.

17. For these reasons, the WGC submits that DHX should not be granted group status, but its services should be renewed and licensed on an individual basis. If the Commission does grant group status to DHX services, then it should only be with respect to the two English-language services, Family Channel and CHRGD.

*CPE and PNI Spending Requirements for DHX Services*

18. Whether or not DHX is granted designated group status, in whole or in part, the WGC submits that both CPE and PNI requirements for DHX's services must be based on historical levels, consistent with the Create Policy discussed above. Subject to several apparent anomalies or discrepancies discussed below, DHX appears to propose CPE requirements that are consistent with historical levels, but proposes a significant *decrease* in its PNI requirements. The WGC opposes this proposal with respect to PNI.

19. The WGC has co-commissioned research prepared by Mario Mota, Boon Dog Professional Services Inc., entitled *Analysis of Financial and CPE and PNI Spending Data Filed By DHX Television as Part of Its Licence Renewal Applications (Part 1 Applications 2017-0821-5, 2017-0822-3, and 2017-0823-1)*, (the Boon Dog DHX Report) and appended to this document.

20. With respect to CPE, DHX proposes a 3-service group CPE of 20% of the previous year's broadcasting revenues or, if the services are licensed individually, a CPE of 22% for Family Channel, 11% for CHRGD, and 10% for Télémagino. These appear to be consistent with the Create Policy, and the WGC would accept such levels. If the Commission adopts a 2-service, English-language group consisting of Family Channel and CHRGD only, our calculations indicate that such a group should have a 21% CPE requirement. See page 2 of the Boon Dog DHX Report.

21. With respect to PNI, Family Channel is currently subject to a minimum PNI spending requirement of 16% of the previous year's gross revenues. According to the information provided by DHX, the 2-year PNI % average for Family Channel while under DHX's ownership was approximately 17% (16.9%—see page 2 of the Boon Dog DHX Report), and the same average for all three DHX services subject to this application was 14.9%.[13] Yet DHX proposes a 10% PNI requirement, both for a 3-service group

[12] DHX, Reply to Info Request 2 Family CHRGD Telemagino, September 19, 2017, pg. 2.
[13] DHX, APP – Doc10 – Appendix 4 – CPE requirement. DHX has not provided, and the WGC is unable to calculate, the historical PNI spending for a 2-service, English-language group on the basis of this information.

comprised of Family Channel, CHRGD, and Télémagino, and for Family Channel alone if it is licensed individually.[14]

22. DHX's proposals represent a very significant decline in minimum spending levels on PNI. On page 3 of the Boon Dog DHX Report, the line entitled "Variance between DHX projected PNI spending and 15% PNI requirement" (shaded yellow) quantifies the impact of this proposal for a 3-service DHX group. Based on DHX's projections, the Boon Dog DHX Report demonstrates an annual negative PNI impact of approximately $2.6–$2.7 million, for a 4-year total impact of nearly $10.7 million less in PNI spending by DHX. Given that broadcaster spending triggers investment by other funders and financiers, such as the Canada Media Fund, tax credits, and international financing, the ultimate impact on the Canadian television production sector would likely be in the tens of millions of dollars, and the potential loss of several medium-to-large-budget live-action and/or animation programs for children and their families. The WGC submits that this is contrary to the objectives of the Act, and the stated intention of the Create Policy to ensure that "current requirements relating to PNI…[are] maintained".[15]

23. With respect to its proposal to reduce its PNI requirements, DHX argues that:

> …it is foreseeable that DHX may develop more Canadian kids and family content outside of the drama genre – such as lifestyle content or reality programs. The proposed PNI expenditure level will provide DHX with sufficient flexibility to explore different Canadian programming streams to respond to viewers' interests, while maintaining a very high commitment to PNI programming.
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> It should be noted that if the existing PNI expenditure requirement of 16% were maintained and applied across all of the Family Services for the next licence term, this would inhibit development and experimentation in new programming categories. It would effectively "lock-in" the services as exclusively drama-based services. Such an approach would place the Family Services at a major competitive disadvantage to their larger vertically integrated competitors and be at odds with the *Let's Talk TV* framework, which is intended to allow programming services the ability to adapt programming to better meet consumer demand – and to respond to competitive pressures.[16]

24. The WGC submits that these arguments are substantially the same as several of those made by Bell Media Inc. (Bell) and Corus Entertainment Inc. (Corus) in the most recent group-based licence renewal proceeding, pursuant to Broadcasting Notice of Consultation CRTC 2016-225. As noted above, the decision in Broadcasting Decision CRTC 2017-148 and related decisions to reduce PNI to 5% was the subject of a successful petition to the Governor in Council pursuant to s. 28(1) of the Act, and the Commission is now reconsidering that decision under Broadcasting Notice of Consultation CRTC 2017-

[14] Licence Renewal Application for Discretionary Services under the Control of DHX Television Ltd., APP - Doc3 - Appendix 1 - Supplementary Brief, pg. 16; DHX, Reply to Info Request 2 Family CHRGD Telemagino, September 19, 2017, pg. 4. DHX would presumably propose the same 10% PNI for a 2-service, English-language group.
[15] Create Policy, para. 289.
[16] Licence Renewal Application for Discretionary Services under the Control of DHX Television Ltd., APP - Doc3 - Appendix 1 - Supplementary Brief, pg. 16.

429. While that reconsideration process is not complete, the WGC submits that arguments that led to that decision and subsequent Cabinet petition should not be followed in this proceeding.

25. In creating the PNI category, the Commission said:

> The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.[17]

26. This remains true today, and the Commission has maintained the PNI concept, including minimum spending requirements on PNI. This includes in the Create Policy, in which the Commission maintained the PNI policy, and neither expressed nor implied any conflict between PNI and other policy changes made as a result of Let's Talk TV, including the elimination of genre exclusivity.

27. As also noted above, the WGC has made detailed submissions in its comments in Broadcasting Notice of Consultation CRTC 2017-429 (the Group Reconsideration Proceeding), on how the CPE and PNI components of the Group Policy were intended to *grow* spending from historical levels for *both* CPE and PNI, and that notions of "standardizing" PNI, for reasons of "competitive parity" or otherwise, were both unfounded and contrary to the Act.[18] We again reiterate those comments here. While in the case of DHX, we are *not* proposing that PNI levels be set *above* historical spending, as we did in our submissions to the Group Reconsideration Proceeding, we rely upon the same rationale to support historical PNI requirements of 17% for Family Channel as a standalone service, or 15% for a 3-service group, or the applicable historical PNI for a Family-CHRGD group.

28. Historical PNI for DHX is not inconsistent with Let's Talk TV or the current competitive broadcasting environment, nor does it prevent DHX from investing in programming in other, non-PNI genres. DHX will still have at least 83% of Family Channel's revenues—or an even higher percentage of a DHX group's revenues, if group status is granted—less other costs and reasonable profits, with which to "explore different Canadian programming streams to respond to viewers' interests." Given that drama programming is the most popular category of programming in Canada,[19] and therefore PNI itself a core part of viewers' interests, we submit that historical PNI for DHX is not a competitive disadvantage.

[17] Group Policy, para. 71.

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

[19] See 2017 Communications Monitoring Report, Table 4.2.14. Drama and comedy (category 7) had the largest viewing share of any other category in English-language and ethnic services, all of Canada (excluding Quebec francophone market) in 2015-2016, at 36.6% of total viewing.

*Apparent Data Anomalies*

29. The WGC has detected two apparent anomalies or discrepancies in the information provided by DHX in this proceeding that we wish to bring to the Commission's attention.

30. The first is in the document titled, "APP – Doc10 – Appendix 4 – CPE requirement, DHX Television Ltd., Historical CPE Spend and PNI". In this document, DHX claims that "PNI as a % of Revenue" is the same for Family Channel/Jr as it is for a 3-service "Consolidated" group, notwithstanding that the "Prior Year's Revenue" for Family Channel/Jr and the "Consolidated" group are different. This does not appear to be an issue for CPE—for FY15, the "CPE as a % of Revenue (Total)" for Family Channel/Jr is 22.1%, while the "Consolidated" percentage is 20.1%; for FY16 the percentages are 22.2% and 20.8% respectively. But "PNI as a % of Revenue" is stated as 18.5% and 16.3%, for FY15 and FY16 respectively, for *both* Family Channel/Jr and "Consolidated". It would seem an odd coincidence if this were true, so raises questions for us about the accuracy of the PNI percentages stated in the document.

31. The second apparent anomaly is described in the Boon Dog DHX Report at page 3, at the line entitled "CPE as % of prior year revenue". This line was derived by taking DHX's projected revenues for its proposed 3-service group, and comparing them to DHX's projected CPE spending. The result comes to 17.9%, 17.8%, 18.1%, and 18.2% for 2018-2019 through 2022-2023. This is well *below* what DHX itself proposes to spend on CPE during that period, which is a minimum of 20% of the prior year's revenues. This is further expanded upon on the same page of the Boon Dog Report, at the line entitled, "Variance between DHX projected CPE spending and 20% CPE requirement" (shaded orange), which finds a 4-year total of $4.2 million *less* than under a 20% CPE requirement. We are confused as to why DHX would propose a 20% CPE minimum requirement but then project spending less than that requirement.

*Tangible Public Benefits Reporting*

32. The WGC notes that in its decision approving DHX's acquisition of Family Channel and its related services in Broadcasting Decision CRTC 2014-388, the Commission did not explicitly require DHX, as a condition of approval of the transaction, to file reports annually detailing spending on tangible public benefits related to the transaction. As such, DHX has not filed annual benefits reports with the CRTC, unlike most other broadcasters with benefits packages to spend. These reports are important and necessary to allow industry stakeholders and the public to track benefits spending separate from baseline regulatory obligations. While DHX filed retroactive benefits spending data in this proceeding at the Commission's request, the WGC suggests the Commission require DHX to file benefits reports annually as part of its licence renewal decision.

**Blue Ant Media Inc.— A.Side, BBC Earth, Cottage Life, HIFI, Love Nature, Makeful, and T + E**

33. Blue Ant Media Inc. (Blue Ant) has proposed a standardized CPE level of 21% for each of the eight discretionary services within the Blue Ant group, based on the "weighted average" of the current CPE requirements for each of these discretionary services.[20] The WGC is aware of analysis filed in this proceeding by the Canadian Media Producers Association (CMPA) demonstrating that Blue Ant's group 3-year average CPE (2013-2014, 2014-2015, and 2015-2016) as a percentage of the previous 3-

[20] Blue Ant Group 2017 Licence Renewal Application – Appendix 1, para. 7.

year average group revenue (2012-2013, 2013-2014, and 2014-2015), was 31% (30.9%). This appears to mean that Blue Ant spent significantly more on CPE over these three years than they were required to by regulation. If accurate, we applaud Blue Ant for demonstrating a significant commitment to the production and presentation of Canadian programming during this period. We believe this also demonstrates, however, a capacity to invest in Canadian programming above the 21% group minimum. While we do not propose that Blue Ant be subject to a 31% CPE requirement, in recognition of their exceptional efforts during the current licence term, we believe that both the Commission and broadcasters should consistently strive to increase and improve investment in Canadian programming.

34. With respect to PNI, Blue Ant has not filed, nor has the Commission required it to file, data showing what it spent on PNI over the current licence term. Moreover, the Group PNI reports filed by Blue Ant and available on the CRTC's website appear to be inaccurate. Those reports show that PNI spending was $18 million in broadcast year 2016, $22.2 million in 2015, and $36.8 million in 2014.[21] These numbers are two times higher (more than three times higher in the case of the 2014 number) than Blue Ant's reported spending on CPE in these years. Given that PNI is a subset of CPE, such a result does not seem possible.

35. As such, interveners do not have access to the necessary data to assess Blue Ant's historical spending on PNI over the current licence term and whether it has met its regulatory obligation regarding PNI and if the current and proposed PNI spending requirement remains appropriate for the next licence term.

**Channel Zero—CHCH-DT, Rewind, and Silver Screen Classics**

36. As noted above in our general comments on CPE and PNI Requirements for Independent Broadcasters, in the Create Policy the Commission expanded CPE requirements to all licensed broadcasters, with levels to be set based on historical spending, but at no less than 10%. In other words, CPE requirements would be set at their historical spending levels or 10%, whichever is greater.

37. With respect to CHCH-DT, its historical CPE appears to be above 30%, but Channel Zero proposes a 15% CPE requirement. With respect to Rewind, its historical CPE spending level is 12%, but Channel Zero proposes a 10% CPE requirement. With respect to Silver Screen Classics, its historical CPE spending level is over 5%, and Channel Zero proposes a 5% CPE requirement. For the latter two channels, Channel Zero is in effect seeking to "reverse" the approach set out in the Create Policy, so as to apply a 10% CPE or one based on historical spending, whichever is *less*.

38. The WGC submits, however, that the Create Policy is conclusive in this respect. As noted above, when the Create Policy was released the Commission was aware that a number of services had historical CPE spending of less than 10%. The Commission nevertheless determined that 10% would be the minimum for all services with more than 200,000 subscribers. This was determined amidst a number of other policy determinations, several of which gave broadcasters increased flexibility and reduced regulatory requirements with respect to Canadian programming. For example, the Commission eliminated evening exhibition requirements for pay and specialty services, and eliminated the genre

[21] The broadcast year dates in each of the Blue Ant Group PNI reports are also inconsistent and therefore confusing.

exclusivity policy. In effect, the Commission chose to emphasize expenditure requirements as the primary regulatory tool to ensure that there is a place for Canadian programming within the Canadian broadcasting system. It would be contrary to both the letter and the spirit of the Create Policy to make exceptions to the historical CPE requirement, or to the 10% CPE minimum for individual channels, due to their record of historical spending or otherwise. Similarly, the Commission was clear that it would not reduce CPE obligations for those that were spending more than 10%, in which cases spending should remain at historical levels.

39. As such, the WGC submits that Rewind and Silver Screen Classics should be subject to minimum CPE requirements of 12% and 10%, respectively, of their previous year's revenues. CHCH-DT should be subject to a minimum CPE requirement based on its historical spending.

*Tangible Public Benefits Reporting – Moviola/Rewind*

40. The WGC notes that in issuing a short-term licence renewal to Moviola (now Rewind) and its related television services in Broadcasting Decision CRTC 2014-421 the Commission also approved a change in ownership and effective control of Moviola: Short Film Channel Inc., licensee of Rewind. In that decision, the Commission directed Moviola to allocate $121,060 in tangible public benefits to the Canada Media Fund, to be paid in equal annual installments over the three years of Moviola's licence term. The Commission failed to explicitly require Moviola, as a condition of approval of the transaction, to file reports annually detailing benefits spending. As such, Moviola has not filed annual benefits reports with the CRTC and thus industry stakeholders do not know if the benefits have been fully spent. The WGC, therefore, asks the Commission to require Moviola to file proof in this proceeding that it has met its requirements with respect to benefits per Broadcasting Decision CRTC 2014-421.

**Knowledge Network Corporation—Knowledge**

41. The WGC supports the renewal of Knowledge as proposed in its application. The WGC supports Knowledge's mandate and activities as a public broadcaster, and encourages Knowledge to continue its positive contribution to the production and distribution of original Canadian programming, including with regard to PNI.

**Conclusion**

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

Yours very truly,

Maureen Parker
Executive Director

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