Writers Guild of Canada

September 27, 2013 **Filed Electronically**

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

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2013-448, Item #2

Application (2013-0596-2) by 832441 Canada Inc., on behalf of TELETOON Canada Inc. (TELETOON Canada), for authority to effect a change in ownership and effective control of the undertakings of TELETOON Canada to Corus Entertainment Inc. (Corus)

Applications to renew the broadcasting licences for TELETOON/TÉLÉTOON (2012-1162-2) and TELETOON Retro (2012-1163-0)

Introduction

1. The Writers Guild of Canada (WGC) is the national association representing more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system.

2. The WGC wishes to offer **conditional support** for the above-referenced Applications, subject to Corus and the CRTC addressing the following comments and concerns. The WGC wishes to appear at the public hearing scheduled to commence on November 5, 2013 in Gatineau, Quebec in order to further elaborate on the issues addressed in this intervention from the perspective of English-language screenwriters.

3. The WGC's comments in this intervention relate primarily to the English-language television services that are part of the proposed transaction. We will leave to better informed stakeholders any issues related to the purchase, licence renewal, and proposed conditions of licence of the French-language television service TÉLÉTOON Rétro (French).

A Member of the International Affiliation of Writers Guilds

366 Adelaide Street West
Suite 401
Toronto, Ontario M5V 1R9

Tel 416 979-7907
1-800-567-9974
Fax 416 979-9273
info@wgc.ca www.wgc.ca

Diversity of Voices and Programming

4. In its Diversity of Voices policy[1], introduced in 2008, the Commission established that, as a general rule, it would not approve applications for a change in effective control that would result in the control, by one person, of a dominant position in the delivery of television services to Canadians that would have an impact on the diversity of programming available to television audiences. The Commission also stated that, barring other policy concerns, transactions resulting in one person controlling less than 35% of the total television audience share would be processed expeditiously, whereas it would carefully examine transactions where one person controlled between 35% and 45% of the total television audience share. *[emphasis added]*

5. The WGC also notes that one of the objectives of the Diversity of Voices proceeding included maintaining "plurality of ownership within the private element" of the broadcasting system, as well as ensuring that further consolidation "provides a net benefit to Canadian audiences and to the creation of Canadian programming."[2]

6. Given that this proposed transaction involves affiliated television undertakings (i.e., those owned by Corus and Shaw Media Inc.), Corus calculated that, following the proposed transaction, the combined viewing share of Corus and Shaw Media's television undertakings in the English-language market would be 36.1% using 2011-2012 broadcast year data. Corus further estimated the viewing share would be 37.1% using 2012-2013 broadcast year data.

7. Corus notes that this proposed transaction, if approved, does not change its audience share position. In other words, there will be no net increase in its share of television audience in the English-language market as a result of the proposed transaction because the services in question have already been counted by the Commission in Corus' audience share by virtue of Corus' 50% ownership in each of the English-language services that are part of this transaction [i.e., TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network].

8. The WGC submits that, regardless of whether additional audience share was obtained by acquisition of additional television services or as a result of organic growth, whenever one broadcast group has an audience share in a given language market of greater than 35% it holds a dominant position in the market. As such, the Commission should closely examine on an ongoing basis whether such a dominant position affects the diversity of programming available to television audiences.

9. Corus' proposed purchase of full ownership and control of TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network is particularly troublesome because it would give Corus a virtual monopoly in the provision of children's and youth television programming, particularly animation programming, to Canadian television audiences. If approved, this transaction will result in the control by Corus of a dominant position in the delivery of children's and youth-based television services (particularly animation-based services) to Canadians. Specifically, Corus would control ABC Spark, Cartoon Network, Nickelodeon (Canada), TELETOON/TÉLÉTOON, TELETOON Retro (English), Treehouse TV, and YTV.

---

[1] *Broadcasting Public Notice CRTC 2008-4*, Regulatory Policy – Diversity of Voices, January 15, 2008.

[2] *Broadcasting Public Notice CRTC 2008-4*, Regulatory Policy – Diversity of Voices, January 15, 2008, at paragraph 25.

10. As part of its intervention commenting on this transaction, the Canadian Media Production Association (CMPA) has submitted audience data showing that with the addition of TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network to its stable of television services targeted at children and youth, Corus would wholly control 70% of the English-language children's television audience to Canadian programs, up from 56% prior to the transaction. With respect to animation programming specifically, following the transaction Corus would wholly control 77% of the English-language children's television audience to Canadian animation programs, up from 60% prior to the transaction.

11. The Diversity of Voices policy expressly states that, as a general rule, the CRTC would not approve applications for a change in effective control that would result in the control, by one person, of <u>a dominant position in the delivery of television services to Canadians</u> that would have an impact on the diversity of programming available to television audiences.

12. The data cited above compiled by the CMPA clearly demonstrates that, if approved, this transaction will give Corus a dominant position in the delivery of children's and animation programming to Canadians that would have an impact on the diversity of programming available to television audiences.

13. As the Commission is aware, since being licensed in 1996, programming decisions for TELETOON/TÉLÉTOON have been made independent of its shareholders. In fact, as part of its last licence renewal in 2004, the Commission expressed the expectation that "primary responsibility for the development, acquisition and investment in programming for the service will be held by Teletoon's President and the Senior Director of Programming, neither of whom will be employees or principals of any shareholders."[3]

14. In proposing to acquire full ownership and control of TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network, the independent voice and programming decision-making that TELETOON Canada's independent senior management brought to these services would no longer exist.

15. As a result, this proposed transaction would result in a reduction in the diversity of voices in the Canadian broadcasting system. It would also reduce the number of owners of several television undertakings in the English-language private element of the Canadian broadcasting system, including the disappearance of one of the remaining few independent broadcast groups (Astral) as a 50% owner and operator of TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network, while increasing the size and power of a vertically integrated broadcast ownership group (Corus).

16. More importantly, in the absence of safeguards, this proposed transaction would result in the loss of programming diversity in the system. As we've seen following past transactions, broadcasters will want to amortize the cost of programming (both Canadian and foreign) over its multiple broadcasting services thereby increasing second- and third-window (repeat) programming within the broadcasting system, at the expense of original programming.

17. The Diversity of Voices policy confirms the importance of diversity of content and the Commission's role in "ensuring that Canadians receive programming from different

---

[3] *Broadcasting Decision CRTC 2004-12*, Teletoon/Télétoon – Licence renewal, January 21, 2004, at paragraph 67.

sources."[4] Screenwriters are well aware that one of the downsides to media concentration is that there are fewer doors to knock on, fewer programmers, and fewer decision-makers who determine what programs will be commissioned.

18. Consolidation and the group-based licensing policy framework[5] also mean that programmers are not just picking a show that will work for a particular programming service but one whose cost can be amortized by airing it across the group on a number of services. Given Corus' dominance in television services targeted at children and youth (particularly animation-based services), the opportunity for programming duplication across many of those services is significant and of great concern to the WGC.

19. The WGC is not suggesting that the Commission deny the transaction due to the Diversity of Voices concerns outlined above but given the potential harm to the Canadian broadcasting system, the Commission has a higher duty of care to ensure that the transaction does not result in giving Corus too much power in the provision of children's and youth programming (particularly animation programming) and does not result in a significant reduction in the diversity of programming available to Canadian television audiences. Put simply, the proposed transaction must be in the public interest and it must truly benefit the Canadian broadcasting system as a whole and not just Corus and its shareholders.

Proposed safeguard: Condition of licence limiting programming overlap among Corus' services

20. In a deficiency letter dated July 12, 2013, CRTC staff noted that, as set out by condition of licence in Appendix 5 to *Broadcasting Decision CRTC 2011-446* (Corus' group licence renewal decision), no more than 10% of the programs broadcast by the specialty television service Treehouse TV may be broadcast by the specialty TV service YTV. CRTC staff then asked Corus to elaborate on the possible programming overlap between Treehouse TV and TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network and whether it would accept a condition of licence limiting programming overlap similar to Treehouse TV's for TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network.

21. In its letter dated July 26, 2013 responding to the CRTC's questions, Corus states that it has been involved with TELETOON/TÉLÉTOON for more than a decade and the programming overlap between TELETOON/TÉLÉTOON and Corus' other children's and youth-based television services "has been minimal". It adds that each of the services have different programming mandates, target audiences, and regulatory obligations and, as such, no additional measure are needed to limit programming overlap. Corus also would not commit to a condition of licence limiting programming overlap, at least not without seeing exact language of such a condition of licence.

22. Based on Corus' response, it is clear that it does not want to be subject to additional regulatory measures to limit programming overlap among its children's and youth-based television services. This suggests that amortizing the same programming over a number of its services will be a key future operating strategy of Corus, should the Commission approve the proposed transaction.

---

[4] *Broadcasting Public Notice CRTC 2008-4*, Regulatory Policy – Diversity of Voices, January 15, 2008, at paragraph 19.

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

23. The WGC submits that Corus is being disingenuous when it downplays the ability and opportunity it will have to duplicate programming across its multiple television services targeted at children and youth (especially its animation-based services), if the transaction is approved. For example, without regulatory restrictions, there will be a significant opportunity for Corus to duplicate programming between 9 p.m. and 6 a.m. on Treehouse TV and TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network (and between YTV, TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network in general).

24. While Corus may be correct in saying programming overlap has been minimal in the past, that is likely due to the fact that programming decisions for TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network have been made independently of TELETOON Canada's shareholders (which includes Corus). The licence expectation regarding independent programming decisions noted above has clearly been a significant mitigating factor in ensuring that programming overlap is limited. The WGC submits that the business incentive or rationale to amortize programming over a greater number of services becomes much greater, and easier, if and when Corus owns 100% of TELETOON Canada's services and the licence expectation no longer exists.

25. Should the CRTC approve the transaction, the WGC urges the Commission to take strong measures to safeguard the diversity of programming in the English-language children's and youth television market, particularly with respect to animation programming. One way to do so is to impose, by condition of licence, restrictions on programming overlap among various Corus television services similar to the condition of licence that currently exists for Treehouse TV and YTV. Specifically, conditions of licence should be imposed on Corus' services limiting programming overlap between Treehouse TV and TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network <u>and</u> YTV and TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network. We would suggest allowing no more than 10% programming overlap among these services.

<u>Determining the Correct Value of the Transaction For the Purpose of Assessing the Quantum of Television Tangible Benefits Payable</u>

26. Valuation is a very complicated and subjective exercise. Purchasers of broadcasting assets will naturally, wherever possible, make choices and assumptions when calculating the value of the assets being acquired so as to reduce their transaction costs, namely the quantum of tangible public benefits payable.

27. The WGC does not have the experience or resources to do an exhaustive review of the true value of the transaction for the purpose of assessing the quantum of television tangible benefits required. We trust, however, that the Commission will conduct its usual due diligence of the value of the transaction and make the necessary adjustments to the valuation. In particular, we expect the Commission to continue its longstanding practice of including the value of conditional future payments, operating lease commitments, and assumed debt and liabilities in the value of transactions for the purpose of assessing the appropriate quantum of benefits payable in this transaction.

<u>Television Benefits</u>

28. Three main policy statements set out what the CRTC expects in regards to tangible public benefits in ownership transactions involving a change of ownership or control of

television undertakings.[6] They state that because the CRTC does not solicit competing applications and because just one proposal is put forward, the onus is on the applicant to prove that its plan is the best possible proposal "in the public interest".

29. Among other things, the applicant is required to propose a package of "significant and unequivocal benefits" that will result in measurable improvements to the communities served by the undertaking(s) <u>and to the Canadian broadcasting system as a whole</u>. *[emphasis added]*

30. In various decisions approving ownership transactions over the years, the Commission has codified its tangible benefits policy with certain practices and standards it expects from benefits packages. For example, the Commission has repeatedly stated that benefits expenditures for television assets should:

- be incremental to existing commitments or regulatory obligations;
- be directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction;
- overwhelmingly flow to "on-screen" initiatives (i.e., between 85% and 90% of all benefits funds);
- generally flow to third parties, such as independent producers;
- be expended as evenly as possible over the benefits period, which should not exceed seven years; and
- not result in administration fees being incurred when benefits packages are self-directed.

31. With the above practices and standards in mind, the WGC has a few questions and concerns related to the television benefits proposed by Corus in its Application, which are outlined below.

32. First, however, the WGC would like to thank Corus for establishing a script and concept development fund of $2.8 million over seven years as part of its tangible benefits proposal.

33. The WGC has long argued that only with adequately funded development can successful television be produced. Development allows a project to be revised and refined and ensures that only the best projects are produced. It is much cheaper to work out creative problems in development than in production. If programs of national interest are to be successful with Canadian audiences, then development needs to be adequately funded.

34. The WGC asks that the third party chosen to administer the script and concept development initiative be one with experience in funding live-action and animation development and production, such as the Canada Media Fund.

[6] See *Public Notice CRTC 1989-109*, ELEMENTS ASSESSED BY THE COMMISSION IN CONSIDERING APPLICATIONS FOR THE TRANSFER OF OWNERSHIP OR CONTROL OF BROADCASTING UNDERTAKINGS, September 28, 1989; *Public Notice CRTC 1993-68*, Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings, May 26, 1993; *Public Notice CRTC 1999-97*, BUILDING ON SUCCESS - A POLICY FRAMEWORK FOR CANADIAN TELEVISION, June 11, 1999.

Clarity needed regarding proposed programming benefits

35. Corus has proposed a tangible benefits package payable over seven years in the amount of $24.9 million, representing 10% of the purchase price ($249 million) of the TELETOON Canada television undertakings [TELETOON/TÉLÉTOON, TELETOON Retro (English), TÉLÉTOON Rétro (French), and Cartoon Network].

36. Corus states in its Application that of these funds, 85% (or $21.165 million) would be dedicated to on-screen initiatives. Of this amount, Corus proposes to allocate $16.615 million (or 79%) to the production of high-quality Canadian programming that is incremental to the existing regulatory requirements of the services that are part of this transaction. Corus states that 90% of this funding will be spent on the production of incremental animation programming. Corus goes on to state that each year $125,000 of this amount would be targeted to the Telefilm Canada Canadian Talent Fund (for a total of $875,000 in total benefits).

37. If Corus proposes to spend 90% of $16.615 million on the production of incremental animation programming, it is not clear to the WGC how it intends to spend the remaining 10%. While Corus has confirmed that no more than 10% of the benefits directed to the production of programming would be allocated to online services or production, we wonder whether any digital media spending will fall under the 90% (i.e., the $16.615 million) or the remaining 10% noted above. It's also unclear to us whether other types of programming other than animation programming will receive benefits funds. Finally, it's not clear to us whether the Telefilm Canada Canadian Talent Fund benefits initiative fall under the 90% (i.e., the $16.615 million) or the remaining 10%.

38. The WGC urges the CRTC to clarify these issues with Corus so that industry stakeholders know exactly how television benefits will be expended and so they can monitor such spending on an ongoing basis. It is critical that tangible benefits be clear and transparent.

100% of benefits funds allocated to the production of incremental Canadian programming should be directed to independently produced programming

39. Corus has proposed directing a minimum of 75% of benefits funds allocated to the production of incremental Canadian programming to independently produced programming. This means it has reserved a significant level of benefits programming funds for in-house production or affiliated production, most likely for its production company Nelvana, which is Canada's largest producer and distributor of children's animation content.

40. Given the longstanding requirement that benefits funds generally flow to third parties, such as independent producers, and given the dominance that Corus will have in the provision of children's and youth television programming (particularly animation programming) to Canadians if this transaction is approved, the WGC submits that it would be appropriate to require Corus to direct 100% of benefits funds allocated to the production of incremental Canadian programming to independently produced programming.

41. This is consistent with the CRTC's approach in its decisions approving the three most recent large broadcasting transactions[7], in which the Commission required 100% of

[7] *Broadcasting Decision CRTC 2013-310*, Astral broadcasting undertakings – Change of effective control, June 27, 2013; *Broadcasting Decision CRTC 2011-163*, Change in effective control of CTVglobemedia Inc.'s licensed broadcasting

benefits funds allocated for the production of programs of national interest (PNI) be directed to independently produced PNI programming.

The proposed Corus Export Initiative does not qualify as an on-screen benefit

42. Corus has proposed allocating $1,750,000 in tangible benefits funds to establish the Corus Export Initiative, which will assist independent producers to gain access to international markets. More specifically, funds will be made available "for preparing and translating international sales packages and for grants for travel and other expenses associated with attendance at world markets."

43. In a deficiency letter dated July 12, 2013, CRTC staff asked Corus to justify why the Corus Export Initiative meets the Commission's eligibility criteria for an on-screen tangible benefit initiative. In its letter dated July 26, 2013 responding to this and other questions, Corus wrote about the importance of marketing and selling Canadian content in the international marketplace and the challenges faced by Canadian producers in doing so. It did not, however, directly answer the question posed in the deficiency letter noted above.

44. While the WGC agrees with Corus that developing international markets for Canadian programming is important, we do not share its view that it is "as important as script development and training programs."

45. The WGC submits that, based on Corus' description of this benefits initiative, the Corus Export Initiative is a marketing and promotion fund and will not result in new incremental on-screen programming. As such, it does not qualify as an on-screen benefit and should be considered as a social benefit instead. In fact, we would welcome it as a social benefit.

46. We note that other broadcasters and the Commission have generally treated marketing and promotion benefits funds as social benefits rather than on-screen benefits (at least when such funds are unrelated to the creation of new incremental Canadian programming). For example, in BCE Inc.'s revised television benefits proposal filed with the CRTC on July 29, 2013 pursuant to a direction in *Broadcasting Decision CRTC 2013-310* (currently under consideration by the Commission), BCE's proposed benefits allocation to the Telefilm Promotion Fund falls under social benefits.[8]

47. Accordingly, the WGC urges the Commission to reject the Corus Export Initiative as an on-screen benefit initiative and consider it a social benefit instead. This would require Corus to file a new proposal to replace the $1,750,000 in benefits funds that would be redirected away from on-screen benefits so that the ratio of on-screen-to-social benefits meets the 85%-15% dollar allocation required by the tangible benefits policy. The WGC encourages Corus to reallocate this amount to its proposed script and concept development fund, which would bring the value of this important benefits initiative to $4.550 million.

---

subsidiaries, March 7, 2011; and *Broadcasting Decision CRTC 2010-782*, Change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries, October 22, 2010.

[8] We note that BCE initially proposed to allocate funds for the promotion of Canadian feature films under its social benefits envelope to the Canadian Association of Film Distributors and Exporters Promotion Fund (the CAFDE Promotion Fund). The CRTC was not convinced that the proposal properly addresses the problem of promoting Canadian feature films and directed BCE to file a new proposal, as part of its revised tangible benefits package, to promote Canadian feature films.

Ensuring that proposed social benefits initiatives have a direct link to the Canadian broadcasting system

48. In a deficiency letter to Corus dated July 26, 2013, CRTC staff asked Corus to specify how proposed funds allocated to various social benefits initiatives will be used and to justify how this use is consistent with what the Commission generally accepts as tangible benefits.

49. Based on the information provided by Corus, the WGC questions how certain proposed social benefits initiatives (namely the YMCA, City Life Project, and Corus Inner City Childhood Obesity Research Initiative) would constitute "significant and unequivocal benefits that will yield measurable improvement to the communities served by the broadcasting undertaking and to the Canadian broadcasting system", as set out in *Public Notice CRTC 1989-109*.

50. The WGC applauds Corus for its support of these causes and programs. They are certainly worthy of corporate charitable donations from Corus. However, the WGC believes that these initiatives (as described by Corus) do not qualify under the Commission's tangible benefits policy since they have little to no relation to the Canadian broadcasting system and will not "benefit" the system as a whole. As noted in the excerpt above quoting *Public Notice CRTC 1989-109*, the Commission has clearly stated in the past that there must be a clear link between tangible benefits expenditures and the Canadian broadcasting system. No such "clear link" exists for these proposed benefits initiatives proposed by Corus.

51. We urge the Commission to ensure that all tangible benefits approved as part of this transaction "yield measurable improvement to the … Canadian broadcasting system," consistent with the tangible benefits policy.

Other matters related to tangible benefits

52. Given that the tangible benefits package proposed by Corus will be self-directed, it is appropriate and necessary to impose specific safeguards related to tangible benefits in this transaction. The WGC proposes that the following conditions be placed on the benefits package as a condition of approval of the transaction, some of which are already standard criteria under the tangible benefits policy or have been imposed in past transactions:

- None of the benefits monies are to be used for administrative costs related to managing the benefits package;
- Annual reports must be filed with the CRTC detailing expenditures, incrementality of spending, and any other information the Commission requires. Benefits reports should be made publicly available. Moreover, consistent with recent CRTC decisions[9], a written attestation from an officer of Corus such as its vice-president of finance should be submitted with the benefits reports to assure the Commission that benefits spending is incremental; and
- Benefits funds should be expended in roughly equal amounts annually throughout the benefits period (i.e., over seven years).

---

[9] See, for example, *Broadcasting Decision CRTC 2013-175*, Amendment to tangible benefits related to the transfer of control of Alliance Atlantis Broadcasting Inc., April 4, 2013.

Terms of Trade

53. In the licence renewal applications for TELETOON/TÉLÉTOON and TELETOON Retro (English) filed by TELETOON Canada, which are being considered as part of this proceeding, TELETOON Canada commits to adhere to a Terms of Trade agreement with the CMPA as a licence "expectation" rather than as a condition of licence.

54. Corus states that the licence renewal applications filed by TELETOON Canada still stand even though it is seeking to bring TELETOON/TÉLÉTOON and TELETOON Retro (English) into the designated Corus group and make them subject to the Corus group licence.

55. It is not clear, however, whether Corus is prepared to make TELETOON/TÉLÉTOON and TELETOON Retro (English), as well as Cartoon Network, subject to a condition of licence requiring each of these services to adhere to a Terms of Trade agreement with the CMPA, as currently applies to the television services that are now part of the Corus group licence.

56. Regardless of Corus' intentions, the WGC submits that should the Commission approve the transaction, TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network should be required, by condition of licence, to adhere to a Terms of Trade agreement with the CMPA.

Recalculating the Corus Group Canadian Programming and PNI Expenditure Requirements

57. Corus has proposed bringing TELETOON/TÉLÉTOON and TELETOON Retro (English) into its group licence under the CRTC's group-based approach for the licensing of private television services, while seeking to operate Cartoon Network independently from the Corus group. Since this would change the composition of the Corus group of services, it is necessary to perform a new calculation to determine the new Corus group's Canadian programming expenditure (CPE) and PNI expenditure requirements.

58. Based on historical CPE and PNI spending data it has filed in this proceeding, Corus proposes a CPE level for the new Corus group going forward of 30% of previous year's gross revenue (unchanged from the current level) and a PNI expenditure level of 12% of previous year's gross revenue (up from the current level of 9%).

59. Given that the WGC and other industry stakeholders do not have access to detailed programming spending data filed by individual television undertakings in their annual returns to the CRTC (a problem we and others continue to ask the CRTC to rectify), we rely on the Commission to verify Corus' calculations to ensure their accuracy and compliance with the group-based licensing policy framework.

Requested Amendments to Conditions of Licence of TELETOON/TÉLÉTOON

60. In the licence renewal application for TELETOON/TÉLÉTOON, TELETOON Canada requests changes to certain conditions of licence. Corus states that the licence renewal application filed by TELETOON Canada still stands even though it is seeking to bring TELETOON/TÉLÉTOON into the designated Corus group and make it subject to the Corus group licence. This results in some anomalies that have not been fully explained by Corus, or questioned by CRTC staff in the deficiency process.

Flexibility to over and under spend on Canadian programming

61. For example, TELETOON Canada is seeking to maintain the flexibility for TELETOON/TÉLÉTOON to over and under spend on Canadian programming and, specifically, to be able to use any overspending amount in <u>any</u> subsequent broadcast year of the licence term. In its licence renewal application, TELETOON Canada rightly notes that this spending flexibility was denied to those television services that are licensed under the CRTC's group-based licensing policy framework. Specifically, the Commission clarified the language of the under- or over-expenditure authorizations to indicate that under-expenditures must be made up in the subsequent broadcast year and that over-expenditures beyond 5% will not be credited against Canadian programming expenditure (CPE) requirements in the following broadcast year.[10]

62. While the flexibility sought by TELETOON Canada for TELETOON/TÉLÉTOON would be appropriate if Corus were seeking a licence renewal for TELETOON/TÉLÉTOON independently of the designated Corus group, that is not what Corus is seeking. The flexibility originally requested is simply not available to TELETOON/TÉLÉTOON under Corus' group-based licence. Accordingly, the Commission must deny this request.

Removal of 5% cap on categories 12, 13, and 14 programming for TELETOON/TÉLÉTOON

63. TELETOON Canada is also seeking to eliminate TELETOON/TÉLÉTOON's condition of licence #1(c), which prohibits the service from devoting more than 5% of the broadcast year to programs from categories 12 (Interstitials), 13 (Public service announcements), and 14 (Infomercials, promotional and corporate videos). TELETOON Canada argues that given that the length of animation programs is varied, TELETOON/TÉLÉTOON relies on short programs to fill the time between shows scheduled on the hour or half hour and to fill in the commercial air time during commercial-free children's programming blocks.

64. While the WGC agrees that TELETOON/TÉLÉTOON continues to require a certain amount of flexibility to broadcast programming from categories 12, 13, and 14, we do not support TELETOON Canada's request to eliminate the existing cap on such programming altogether. We note that TELETOON Canada has not requested to eliminate or change the existing condition of licence (COL #4) prohibiting TELETOON Retro (English) from devoting more than 5% of the broadcast year to programs from categories 12, 13, and 14. The WGC questions why the 5% cap is problematic for TELETOON/TÉLÉTOON and not TELETOON Retro (English).

65. Accordingly, the WGC urges the CRTC to continue to impose a cap on programming from categories 12, 13, and 14, by condition of licence, on TELETOON/TÉLÉTOON. The WGC suggests that a cap of 10% would be appropriate.

<u>Conclusion</u>

66. In closing, the WGC conditionally supports the Application for authority to effect a change in ownership and effective control of the English-language undertakings of TELETOON Canada [namely TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network], subject to our comments above. Absent Corus and the CRTC addressing the WGC's concerns, we submit that the transaction would not be in the public interest because it would not provide significant and unequivocal benefits to the Canadian broadcasting system as a whole and to Canadians sufficient to outweigh concerns

---

[10] *Broadcasting Decision CRTC 2011-441*, Group-based licence renewals for English-language television groups – Introductory decision, July 27, 2011, at paragraph 63.

related to the exercise of market power with respect to the provision of children's and youth television programming (particularly animation) to Canadians and maintaining programming diversity in the system.

67. We respectfully request that the Commission err on the side of the overall Canadian broadcasting system and the public interest when reviewing this transaction. Consolidation may be good for Corus' business but it has the potential to limit creative opportunities and programming choices in the system. This transaction will result in further consolidation in the Canadian broadcasting system that has the potential to reduce the diversity of creative voices in the system, particularly in the children's and youth programming genres (especially animation).

68. Specifically, we ask that the Commission:

a) Take measures to ensure that the transaction does not result in a significant reduction in the diversity of programming, particularly children's and youth programming (and especially animation programming), available to Canadian television audiences;

b) Ensure that the total value of the transaction is proper and appropriate;

c) Ensure that the tangible benefits package proposed by Corus fully conforms to the CRTC's tangible benefits policy and the practices and standards related to benefits that have been developed over the years;

d) Require TELETOON/TÉLÉTOON, TELETOON Retro (English), and Cartoon Network to adhere to a Terms of Trade agreement with the CMPA, by condition of licence;

e) Deny TELETOON Canada's request to maintain the flexibility for TELETOON/TÉLÉTOON to over and under spend on Canadian programming and, specifically, to be able to use any overspending amount in any subsequent broadcast year of the licence term; and

f) Deny TELETOON Canada's request to completely eliminate the existing condition of licence capping the amount of programming that TELETOON/TÉLÉTOON can broadcast from categories 12, 13, 14.

69. We thank the Commission for the opportunity to provide our comments related to this transaction, and look forward to elaborating on them at the public hearing.

Yours very truly,

Maureen Parker
Executive Director

c.c.: National Council, WGC
Sylvie Courtemanche, Vice President, Government Relations, Corus Entertainment Inc. (sylvie.courtemanche@corusent.com)

*** End of Document ***