Writers Guild of Canada

November 3, 2023 **Filed Electronically**

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

Dear Mr. Doucet:

**Re: Application No. 2022-0946-0: Part 1 application to amend conditions of licences applicable to Corus Entertainment Inc. English- and French-language television groups – Additional Comments**

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 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.

2. The WGC **continues to vehemently oppose this application**.

3. In Broadcasting - Secretary General Letter addressed to Matt Thompson (Corus Entertainment Inc.), dated 19 October 2023 (the Letter),[1] the Commission states that Corus, "has found itself in a unique financial situation," stating that, "the company's debt ratio has increased to unacceptable levels owing to a 61 percent free cash flow decrease over the previous year, and rapidly declining profitability." The Commission, "notes Corus' unique position as Canada's largest non-vertically integrated private broadcaster." In light of this, the Commission states that it is, "of the preliminary view that it would be appropriate and in the best interest of the Canadian broadcasting system as a whole to amend the conditions of service that apply to Corus' English-language television stations and discretionary services." This includes the following proposed order:

> Replacing the condition of service found in Broadcasting Decision CRTC 2017-150, Appendix 2, condition of service #7, and Appendix 3, condition of service #7, as amended by Appendix to Broadcasting Decision CRTC 2018-335, with the following:

[1] https://crtc.gc.ca/eng/archive/2023/lb231019.htm

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> In accordance with A group-based approach to the licensing of private television services, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, the licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest, as defined in paragraphs 71 to 73 of that regulatory policy, a minimum of 5% of the previous year's gross revenues of the undertaking.

4. The WGC **strenuously opposes this proposed order**. The WGC respectfully submits that such an order would:

    a) Provide Corus with a "solution" that does not actually address the problems stated by Corus or cited by the Commission;
    b) Ignore the already-existing flexibility mechanism of expenditure requirements on programs of national interest (PNI) namely, that, as a percentage of broadcasting revenues, expenditure requirements will automatically decline as Corus's revenues decline;
    c) Reward Corus for its apparent non-compliance with its PNI conditions of licence (COL) and retroactively reduce Corus's PNI going back as far as 2019;
    d) Contradict the Commission's own Order in Council P.C. 2017-1060, that has already determined that a 5% PNI level is unacceptable; and,
    e) Given the above, fail to advance the objectives of the *Broadcasting Act*.

<u>Reducing Corus's PNI requirements does not address Corus's short term financial challenges</u>

5. The Commission, in the Letter of October 19, 2023, stated that, "[Corus's] debt ratio has increased to unacceptable levels owing to a 61 percent free cash flow decrease over the previous year, and rapidly declining profitability." We must conclude that these three financial metrics—debt ratio, cash flow, and profitability—are what the Commission has based its preliminary view on.

6. Further, the Commission clearly believes that this an urgent matter to which it must respond quickly. In the Letter, the Commission states that its proposed approach, "would recognize the urgency of the situation and provide short term flexibility." The Commission uses the words "urgent" or "urgency" three times in its relatively brief Letter, and "short term" twice.

7. Yet there is nothing on the public record demonstrating that reducing Corus's PNI requirements to 5% will address any of the three stated financial metrics in the short term. This is in large part because PNI is a subset of Canadian Programming Expenditure (CPE) requirements, <u>and Corus's CPE will not change</u> under the proposed order to reduce PNI. In the short term, Corus must still spend the same amount of money on Canadian programming under the Commission's proposed order on PNI as it would without it.

8. As such, PNI reductions will not address Corus's short-term cash flow, since it will still need to flow the same amount of cash to Canadian programming. PNI reductions will also not address Corus's debt ratio—and certainly not in the short term—since, again, Corus will still spend the same amount on Canadian programming. In addition, Corus's debt ratio is a larger structural issue that cannot plausibly be addressed in a year or two, nor does Corus lay out how it could. Similarly, Corus's profitability will

not be affected by short-term PNI reductions, given that it typically takes years for programming to show profits.[2]

9. Importantly, Corus itself has provided no evidence linking PNI reductions to these financial metrics. Nowhere in Corus's application does it draw a clear line between such reductions and their impacts on its short-term financial health. In essence, Corus simply states its financial challenges and then asks for regulatory relief. That is simply not good enough. Corus must demonstrate, specifically, how such reductions would address these issues, in the short term and on an urgent basis, and, in the words of the Commission's Letter, be in the best interest of the Canadian broadcasting system as a whole.

10. To be clear, the WGC is not proposing that the Commission reduce Corus's CPE obligations, given the additional reasons we provide below. It is notable, however, that Corus's own application with respect to PNI won't fix Corus's financial situation, and therefore must be seen as being about something else. If reducing PNI won't address the financial metrics that the Commission is concerned about, then the Commission should not reduce Corus's PNI on that basis.

Corus remains a successful and profitable company

11. Corus's application to the Commission tells a story of doom and gloom, but its tone was quite different on its Fiscal 2023 Fourth Quarter and Year-End Earnings Conference Call on October 27, 2023.[3] There, Corus boasted of a 16% television segment profit margin for Q4-2023, and a 24% television segment profit margin for the 2023 fiscal year.[4] These are quite healthy profit margins, and the tenor of the call was decidedly optimistic for Corus as they saw advertising revenues strengthening in the medium term.

12. In its regular filings with the Commission, Corus has reported nearly $100 million in Profits Before Interest and Taxes (PBIT) for 2022.[5] This is indeed a decline from previous years, but nevertheless represents real profits for Corus, a massive media corporation that is making money.

13. Yet Corus wishes to offload further costs at the expense of Canadian creators, including Canadian screenwriters, who made a median income of $23,976 in 2023 to date under the WGC's jurisdiction. In addition, WGC recently reported that over the past five years, the aggregate earnings of its Canadian citizen members have declined by nearly 22% in inflation-adjusted terms.

14. We submit that many of the elements that Corus complains of now are directly a result of Corus's own decisions. It was the result of decisions of Corus's ownership that Corus is no longer a vertically integrated company. It is a result of Corus's own decisions and that of its ownership that Corus has the debt ratio that it has. And, it is frankly the result of Corus's own decisions that it struggles to make

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[2] The WGC has direct experience in this regard, via the royalty formula under which screenwriters are entitled to participate in the profits of productions under our jurisdiction once those productions do go into profit. It is indeed often years before such profits materialize. See the WGC-CMPA (IPA 2019-2022) Independent Production Agreement, Article C11: https://www.wgc.ca/screenwriters/resources/agreements/ipa2019_2022/article_c11.

[3] https://www.corusent.com/investor-relations/events-and-presentations/fourth-quarter-2023-and-year-end-earnings-conference-call/

[4] Fiscal 2023 Fourth Quarter and Year-End Earnings Conference Call on October 27, 2023, Presentation, pg. 9.

[5] Corus English-language Designated Group Aggregated Annual Returns.

PNI programming profitable. Drama is among the most-watched genre by Canadians,[6] and one of the most popular genres in the world.

15. If Corus can't make money on PNI, it's because they haven't invested over the long term in those genres and the corporate culture that prioritizes their success. There is nothing wrong with PNI genres themselves, and there is nothing wrong with Canadian talent who make it. What is wrong is Canadian broadcasting executives who find it easier to make money in other ways. And now Corus (among others) wants to reduce its commitment to the genre because things have become a little less easy for them. We respectfully submit that the Commission should not let them.

<u>The PNI expenditure formula already self-corrects to revenue reductions</u>

16. As we have stated previously in our comments in this application, and in other proceedings, PNI (and CPE) expenditure requirements automatically self-adjust to revenue declines, given that they are based on a percentage of broadcasting revenues. Corus's PNI obligation is to spend 8.5% <u>of the previous year's gross revenues</u>. That means that if Corus's revenues go down, its PNI obligations go down in dollar terms. If Corus earns 20% less in revenues, it would need to spend 20% less in PNI the following year. If Corus earns 50% less in revenues, it would need to spend 50% less on PNI. If Corus earns no revenues, it has no PNI obligations.

17. This relates back to the alleged urgency of this application. Corus will naturally receive "regulatory relief" on PNI in proportion to its revenue declines, and that "relief" will come automatically in the following year, without the Commission taking any action on Corus's PNI percentage. Corus has made no argument as to why it can't wait that long. Instead, the Commission is considering giving Corus *double relief* by reducing the PNI percentage, <u>on top of which Corus's revenues declines will reduce actual PNI spending further</u>.

18. The WGC opposes this double hit to PNI spending in Canada, and the double benefit to Corus as a result.

<u>Corus is in apparent non-compliance with its COLs and the Commission's proposed order would effectively enshrine and reward that non-compliance</u>

19. According to Corus's English-language Designated Group Aggregated Annual Returns, as of the end of the 2022 broadcast year, <u>Corus has amassed a shortfall in spending on PNI of $17.11 million</u>. This is in addition to a shortfall in CPE of $47.01 million.

20. The order proposed by the Commission in the October 19 Letter would replace "the condition of service found in Broadcasting Decision CRTC 2017-150, Appendix 2, condition of service #7, and Appendix 3, condition of service #7, as amended by Appendix to Broadcasting Decision CRTC 2018-335," with a lower, 5% PNI requirement. As currently worded, then, the order proposed by the Commission would seem to have retroactive effect, essentially "forgiving" non-compliance by Corus and over $17 million in cumulative PNI under-spending. This would both reward regulatory non-compliance and further harm Canadian creators who rely upon broadcaster investment in PNI, as well

[6] Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

as Canadian audiences who wish to have access to Canadian PNI programming in the Canadian broadcasting system.

21. Of course, we do not know where Corus's apparent non-compliance stands for the 2023 broadcast year, as broadcasters are not required to file such information until November 30. Given Corus's claims of ongoing difficulty, it seems possible, if not likely, that Corus has also fallen short on PNI spending for 2023. This would further exacerbate this issue, both in terms of regulatory compliance and in the scale of the harms the Commission's proposed order would have.

22. As such, we submit that, at the very least, the Commission should wait until it sees 2023 Annual Return data filed by Corus before making any final decisions on Corus' application. This will also allow the Commission to review the latest revenue and PBIT information for the company.

23. Further, while we strenuously oppose Corus's application altogether, we submit that if the Commission is dead set on issuing its proposed order, despite the lack of demonstrated linkage between it and Corus's immediate financial challenges, then it must at least limit the damage this would cause to spending going forward from now. We submit that the Commission should not reward Corus for its apparent non-compliance to date. This would not only be wrong on its face, but would also encourage other regulated entities to ignore conditions of service and then "beg for forgiveness" after the fact rather than "asking permission" in the first instance. This would undermine the entire regulatory system.

<u>The proposed order contradicts Order in Council P.C. 2017-1060</u>

24. By Order in Council P.C. 2017-1060, issued on 14 August 2017, the Governor General in Council referred back to the Commission for reconsideration and hearing certain aspects of the decisions contained in Broadcasting Decisions 2017-143 to 2017-147 (French-language ownership groups) and Broadcasting Decisions 2017-148 to 2017-151 (English-language ownership groups), indicating that the decisions derogate from the attainment of the objectives of the Canadian broadcasting policy set out in section 3(1) of the *Broadcasting Act* (the Act). Broadcasting Decisions 2017-148 to 2017-151 in particular lowered the PNI obligations of Corus, along with that of Bell Media Inc. (Bell), to 5%. The Governor General in Council found this to derogate from the attainment of the objectives of the Canadian broadcasting policy. This ultimately resulted in Broadcasting Decision CRTC 2018-335, in which the Commission determined that Bell and Corus services will be subject to PNI expenditure requirements of 7.5% and 8.5% of the previous broadcast year's gross revenues, respectively.

25. The Commission's proposed order in this proceeding effectively repudiates Order in Council P.C. 2017-1060 in at least two ways. Firstly, it changes Corus's PNI obligations to 5%, despite the Order in Council clearly stating that such a level was not acceptable. And, secondly, given the apparent retroactive effect of the Commission's proposed order, it effectively claws back much of the benefits to the creative sector and Canadian audiences that the Commission achieved in Broadcasting Decision CRTC 2018-335.

The proposed order fails to advance the objectives of the *Broadcasting Act*

26. Given all this, we submit that the proposed order fails to advance the objectives of the *Broadcasting Act*. Similarly, Corus's application fails to demonstrate how the relief it seeks would advance the objectives of the Act, nor does it spell out the consequences for the Canadian broadcasting system if the application is not granted. Corus has already admitted that its proposed amendments will not result in a change to existing financial projections, and is not necessary for its financial viability.[7] What, then, are the consequences for rejecting this application, other than investment in Canadian production and support for Canadian creators, including screenwriters, who are already struggling in the current environment?

27. The objectives of the Act include that: each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;[8] the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;[9] the Canadian broadcasting system should encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming…;[10] each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;[11] and, each Canadian broadcasting undertaking shall employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources in the creation, production and presentation of programming…[12]

28. The WGC fails to see how these or other objectives are advanced in any meaningful way by Corus's application, or by the proposed order. Order in Council P.C. 2017-1060 has already stated that a 5% PNI requirement for Corus derogates from the attainment of the objectives of the broadcasting policy for Canada. And while the Act has been amended since then, there is no indication from either Corus or the Commission as to which amendment(s) materially alter this finding.

29. For all of these reasons, the WGC submits that the Commission should deny this application by Corus and not issue the proposed order contained in its October 19, 2023 Letter as it pertains to PNI.

30. We thank the Commission for the opportunity to participate in this proceeding.

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[7] Application, Form 301 – Amendment Requests – Television, pg. 5.
[8] Section 3(1)(a.1).
[9] Section 3(1)(d)(i).
[10] Section 3(1)(d)(ii).
[11] Section 3(1)(e).
[12] Section 3(1)(f).

Yours very truly,

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Cc: Matt Thompson, VP and Associate General Counsel, Regulatory, Privacy and Public Policy, Corus Entertainment Inc. (corus.regulatory@corusent.com)
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