



Writers Guild
of Canada

March 11, 2024

Filed Electronically

Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Application by CBC/Radio-Canada No. 2023-0391-5: Part 1 Application to amend the conditions of licence relating to the calculation of Canadian programming expenditures and programs of national interest (Broadcasting Decision CRTC 2022-165) – Additional information

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. We are pleased to provide our comments on the additional information placed on the public record in this proceeding.
3. The WGC continues to stand by its comments made in the initial written submission phase of this proceeding. CBC/Radio-Canada (CBC) characterizes the inclusion of programming expenditures from the coverage of Olympic and Paralympic Games in the calculation of programs of national interest (PNI) requirements as “unintended” or creating “unintended consequences,”¹ but there is no evidence that we can see that this is indeed the case. CBC says that the Commission’s methodology, “hinders the Corporation’s ability to have a balanced programming offer to Canadians,”² but offers no detailed analysis on why that might be. On the contrary, offering PNI to Canadians—a category of programming that the Commission has called, “expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values,” and in, “continuing need for regulatory support,”³ and which the Commission has repeatedly reaffirmed the need for regulatory support in multiple proceedings, including the most recent licence renewal of the CBC—is just such an example

¹ CBC Application, Supplementary Brief, paras. 29, 31.

² CBC Application, Supplementary Brief, paras 29.

³ Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

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of “balanced programming” that the *Broadcasting Act* contemplates and that the Commission envisioned when it imposed the current conditions of licence (COLs). Moreover, the “Commission’s methodology” was actually the CBC’s own position, expressed in the same paragraph in which it acknowledged the impact of events like the Olympics.⁴

4. In addition, the CBC continues to sidestep the question of the revenues that it may earn in connection to the Olympics. Just as programming costs for the CBC go up in Olympics years so too do revenues. Over the five broadcast years of 2018-2022, CBC English network television averaged revenues of \$484.1 million per year (2019 and 2020) compared to \$569.4 million (2018, 2021, and 2022), or 17.6% higher in Olympic years.⁵ And the CBC has also spent more on PNI in those years, according to its own cited data.⁶
5. In the most recent information placed on the public record, the CBC appears to continue to present evidence that effectively assumes the truth of the conclusion it is asking the Commission to reach. In its February 21, 2024 response to the Commission’s February 9, 2024 request for information, at “CBC - Table 1 - updated in February 2024 with actual expenditures for BY 2023,”⁷ the CBC inserts “Projected” PNI spending for 2024 through 2027 and compares that with “Min. Required PNI (55% of CPE)”. In each year other than 2023 and 2025 there is a deficit as between the two numbers and the CBC concludes that, “even when accounting for both the underspend and the overspend flexibility in the conditions of service, CBC will not be able to meet its minimum PNI requirement in the current broadcast year (2023-2024).”⁸
6. The problem continues to be, however, that this begs the question of *why* the CBC’s projected PNI spending is the “correct” or “only” amount of spending on PNI by the CBC and therefore why the CBC cannot meet its minimum PNI requirement. The entire purpose of the CBC’s PNI spending obligation is to *require* it to spend that minimum amount. The 55% minimum was arrived at through a public process based on the CBC’s historical spending, which did include at least one Olympics year. So why is that spending requirement now not attainable? That is the core question of this proceeding, yet the CBC still does not explain it in any meaningful level of detail.
7. Stated in other words, in the aforementioned Table 1, the CBC has put \$156,301,000 as its projected PNI spending for BY 2024, and \$191,190,000 for the minimum required PNI spend, and then pointed out the obvious fact that the former falls short of the latter by \$34,889,000. That part is clearly true—it’s just math of the latter minus the former. But *why* is \$156,301,000 the number the CBC is projecting? How does that number represent what the CBC *should* doing, as a “balanced programming schedule” or otherwise? That is the question that remains unanswered. If all it took to make the argument in the CBC’s application is to state a projected spend being less than a COL, and then say that the broadcaster’s projected spend is less than the COL, then literally any broadcaster could seek regulatory relief on the same basis. It amounts to saying, “We can’t meet this COL because we don’t plan to meet this COL.”

⁴ Final Reply of CBC/Radio-Canada Broadcasting Notice of Consultation CRTC 2019-379, March 17, 2021, para. 21.

⁵ CBC Aggregated Annual Returns.

⁶ CBC Application, Supplementary Brief, Tables 7 and 8.

⁷ DM#4561368 - Réponse-Response - 9 February 2024 - CBCSRC reply to RFI 21 February 2024, pg. 4.

⁸ *Ibid.*, pg. 5.

8. We also note that in the updated information provided by the CBC shows that they actually spent more in 2023 than they had originally projected when they submitted this application.⁹ This demonstrates, at the very least, that projections are not absolutes, they are statements of intention, and the CBC can spend more if they choose to.
9. Also, since February 21, 2024, the date of the CBC response to the Commission's request for information, the federal government has announced additional funding for the CBC amounting to \$96.1 million for 2024-2025.¹⁰ This additional funding presumably had not been taken into account by the CBC as of February 21, but its impact naturally should be considered as part of this application for regulatory relief.
10. Finally, if the crux of the CBC's concern is that, in setting the benchmark of its PNI requirements, the Commission used three years of data, only one of which was an Olympics year, which does not well represent a given 5-year licence term, then this would be much better addressed by reconsidering the benchmark years upon which the Commission calculates CBC's PNI obligations. However, it must be emphasized that neither a 3-year nor a 5-year benchmark and/or licence term will fully represent the impacts of an event that occurs every two years. In any given 3-year benchmark, the Olympics will either be under-represented, as one out of three, or over-represented, as two out of three. Similarly, in any given 5-year licence term, there will either be two Olympic years or three Olympic years. As such, if this is truly the Commission's concern, the solution is to prorate the impact of a biennial event over whatever benchmark period and/or licence term it is considering.
11. Again, this issue is *not* best addressed by simply removing Olympics and Paralympics costs from these requirements entirely. Such a solution would go far beyond the question of benchmark years or licence terms, and instead remove a major component of what the CBC does, what the CBC spends money on and, how the CBC earns revenues and, by extension, significantly skew the overall picture of CBC's activities, which is precisely the backdrop against which we must consider what "balanced programming" means.
12. We thank the Commission for the opportunity to have participated in this process.

Yours very truly,



Neal McDougall
Assistant Executive Director, WGC

⁹ As compared to Table 10 in the CBC Application, Supplementary Brief, pg. 9. For BY 2023, CBC projected to spend \$164,821,000, but the updated information shows that they actually spent \$170,468,000.

¹⁰ <https://www.canada.ca/en/treasury-board-secretariat/services/planned-government-spending/government-expenditure-plan-main-estimates/2024-25-estimates.html>, Table 40. See also <https://www.cbc.ca/news/politics/cbc-funding-st-onge-1.7129784>.

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