ANALYSIS OF CANADIAN PROGRAMMING EXPENDITURE AND PROGRAMMING OF NATIONAL INTEREST PROPOSALS FILED BY THE BROADCAST GROUPS AS PART OF THEIR RESPECTIVE GROUP LICENCE RENEWAL APPLICATIONS

(Broadcasting Notice of Consultation CRTC 2010-952)

A Joint Report From:

Alliance of Canadian Cinema, Television and Radio Artists (ACTRA),
Directors Guild of Canada (DGC), and
Writers Guild of Canada (WGC)

February 2011

I. EXECUTIVE SUMMARY

The Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA"), Directors Guild of Canada ("DGC"), and Writers Guild of Canada ("WGC") (hereinafter the "Creative Community") have collaborated to analyze the proposals related to Canadian programming expenditure ("CPE") and programs of national interest ("PNI") requirements filed by the broadcast groups as part of their respective group licence renewal applications pursuant to *Broadcasting Notice of Consultation CRTC 2010-952*) ("BNC 2010-952").

This "Joint Report" details ACTRA, DGC, and WGC's views on the CPE and PNI proposals made by the respective broadcast groups seeking to be licensed under the CRTC's new group-based licensing regime (namely CTVglobemedia, Shaw Media, Corus Entertainment, and Rogers Media).

The Creative Community notes that there are significant data gaps and inconsistencies in information on television licensees available to the public, both with respect to the general statistical and financial data collected and released annually by the Commission and with respect to specific information (or lack thereof) available on the public file of this proceeding. This makes it virtually impossible for interveners to accurately and properly assess the CPE and PNI proposals put forward by the broadcast groups.

Given the complexity and significance of this proceeding, the Creative Community urges the Commission to maximize the information and data available to the public in advance of the public hearing in April so that interveners can play a meaningful and helpful role in this licence renewal process.

The Creative Community questions the appropriateness of partially using revenue projections (i.e., for 2011), rather than actual numbers, in averaging group revenues for the purpose of setting the CPE and PNI levels for Year 1 of the new licence term (2012). Given the unpredictability of projections, the Creative Community cautions the Commission against using the approach proposed by the broadcast groups.

The Creative Community is not opposed to the broadcast groups' request for an annual 10% flexibility with respect to any under-expenditure on group CPE and/or PNI. However, this request would provide the broadcast groups with a significant level of additional flexibility over and above the already significant expenditure flexibility provided to them in the group-based licensing policy framework. As such, the Commission should assess this request in the context of the overall proposals made by each of the broadcast groups in their licence renewal applications, including their proposed group CPE and PNI percentage levels and requested changes to various conditions of licence.

We agree with CTVglobemedia that all broadcast groups should be subject to the same group CPE and the same or substantially similar PNI percentage requirements in the new licence term.

The Creative Community notes that all of the broadcast groups in this licence renewal proceeding are, or soon will be, part of very large (and very profitable) vertically integrated companies that have the financial resources to contribute to Canadian programming and programs of national interest at levels that are higher than recent historical spending levels.

With respect to the specific proposals related to group CPE and PNI requirements put forward by each of the broadcast groups, and notwithstanding the lack of publicly available complete data to properly and accurately assess the broadcast groups' proposals, the Creative Community makes the following comments.

CTVglobemedia

- Based on our analysis of required and actual CTVglobemedia ("CTVgm") group spending on Canadian programming in 2008 and 2009 (the only years in which complete group CPE data are publicly available), it appears that a minimum group CPE level of 30% of gross group revenue is appropriate for CTVgm for the new licence term. However, this is subject to confirmation by the Commission's internal analysis of recent historical spending using various recent historical time periods, as discussed below.
- Based on our analysis of actual CTVgm group spending on PNI in 2008 and 2009 (the only years in which complete group PNI data are publicly available), it appears that a minimum group PNI level of 5% of gross revenues is too low for CTVgm for the new licence term. Based on our limited two-year analysis (i.e., 2008 and 2009), CTVgm's PNI spending level was actually about 7% of its gross group revenue. However, given the principle expressed above that all broadcast groups be subject to the same or similar group PNI level, and based on our limited analysis of recent historical spending on PNI by the other broadcast groups, we submit that a 10% group PNI requirement is more appropriate for CTVgm for the new licence term, rather than the 5% level it has proposed.

Shaw Media

- Given the principle expressed above that all broadcast groups be subject to the same group CPE level, we submit that a 30% group CPE requirement is more appropriate for Shaw Media for the new licence term, rather than the 29% level it has proposed. This approach ensures that Shaw Media will be required to spend the same level on Canadian programming on a proportional basis as CTVgm, which it competes with for programming, audiences, and revenue. This is only fair.
- Based on our analysis of actual and estimated Shaw Media group spending on PNI in 2008 and 2009 (the only years in which complete group PNI data are publicly available), it appears that a minimum group PNI level of 5% of gross group revenue is much too low for Shaw Media for the new licence term. Therefore, we urge the Commission to set a group PNI spending level for Shaw Media for the new licence term that is consistent with actual recent historical spending. Based on our limited two-year analysis (i.e., 2008 and 2009), Shaw Media's PNI spending level was actually about 10% of its gross group revenue.

Corus Entertainment

- Given the principle expressed above that all broadcast groups be subject to the same group CPE level, we submit that a 30% group CPE requirement is more appropriate for Corus for the new licence term, rather than the 29% or alternative 27.75% levels it has proposed. This approach ensures that Corus will be required to spend the same level on Canadian programming on a proportional basis as CTVgm.
- Based on our analysis of actual and estimated Corus group spending on PNI in 2008 and 2009 (the only years in which complete group PNI data are publicly available), it appears that a minimum group PNI level of 5% of gross revenues is much too low for Corus for the new licence term. Therefore, we urge the Commission to set a group PNI spending level for Corus for the new licence term that is consistent with actual recent historical spending. Based on our limited two-year analysis (i.e., 2008 and 2009), Corus' PNI spending level was actually about 10% of its gross group revenue.

Rogers Media

- Consistent with the principle expressed above that all broadcast groups be subject to the same group CPE level, we submit that a 30% group CPE requirement is more appropriate for Rogers for the new licence term, rather than the 25% level it has proposed. This approach ensures that Rogers will be required to spend the same level on Canadian programming on a proportional basis as CTvgm, which it competes with for programming, audiences, and revenue. This is only fair.
- The Creative Community has expressed the view that all broadcast groups should be subject to the same or similar PNI spending level. Given our assessment that a PNI spending level of 5% of gross group revenue is too low for each of CTVgm, Shaw Media, and Corus Entertainment, a higher level would therefore also apply to Rogers Media. However, we acknowledge that requiring Rogers Media to adhere to a PNI spending level that is the same or similar to that of the other broadcast groups would be "unreasonably high" (to use Rogers' words) given the mix of assets in the Rogers Media group. As such, we believe it would be appropriate to require Roger Media to spend 5% of gross group revenue on programs of national interest in each year of the new licence term.

II. ANALYSIS OF DATA GAPS AND INCONSISTENCIES IN INFORMATION AVAILABLE ON THE PUBLIC FILE

Before getting into the substance of the broadcast groups' proposals, the Creative Community wishes to express its disappointment and frustration with the significant data gaps and inconsistencies in information on television licensees available to the public, both with respect to the general statistical and financial data collected and released annually by the Commission and with respect to specific information (or lack thereof) available on the public file of this proceeding.

This makes it virtually impossible for interveners to model the broadcast groups' CPE and PNI proposals to ensure that they are consistent with the Commission's intentions expressed in the group-based policy framework, *Broadcasting Regulatory Policy CRTC 2010-167* ("BRP 2010-167"). It also hampers interveners' ability to offer constructive comments and counter-proposals in this proceeding.

Given the complexity and significance of this proceeding, the Creative Community urges the Commission maximize the information and data available to the public in advance of the public hearing in April so that interveners can play a meaningful and helpful role in this licence renewal process.

Some of the general information and data gaps we have encountered while preparing our respective interventions in this proceeding are outlined below.

Problems with Aggregated 2010 Television Annual Return forms

The completed Aggregated 2010 Television Annual Return forms of the large conventional TV groups are of critical importance for interveners to assess the broadcast groups' proposals in this proceeding. The 2010 returns submitted by CTVglobemedia ("CTVgm"), Shaw Media, and Rogers Media were first posted on the Commission's website on January 7, 2011, two and a half weeks after the release of BNC 2010-952 on December 22, 2010. Upon reviewing the returns, the Creative Community immediately brought to CRTC staff's attention that the Shaw Media return contained a blacked-out total revenue line and no spending data on Category 2(b) (Long-form

Documentary) and Awards Shows. The other broadcast groups did provide this information in their respective 2010 returns.

A revised Shaw Media 2010 return with the above-noted missing information included was posted on the Commission's website on January 19, 2011. A further revised 2010 return (containing slightly adjusted revenue, PBIT, and other numbers) was posted on January 28, 2011, just a week and a half before the deadline for filing interventions in this proceeding.

A more general problem with the group aggregated conventional TV returns pertains to the Rogers Media return, which contains data for the Citytv and OMNI television stations combined. As the Commission is aware, however, Rogers has proposed excluding the OMNI stations from the group-based licensing regime. This means that much of the information filed by Rogers in this proceeding to support its group CPE and PNI proposals has no resemblance to what is available to interveners publicly. Clearly, this makes it very difficult for interveners to accurately and properly assess Rogers' proposals.

While the Creative Community takes no position on Rogers' approach to exclude the OMNI television stations from its group licence renewal application, we note that it has been Commission practice to include the revenues and expenditures of ethnic conventional TV stations with that of private English-language conventional TV stations in its statistical and financial summaries and Communications Monitoring Reports. This is because ethnic TV stations broadcast a significant amount of English-language programming (i.e., approximately 40%). Presumably, this is also why Rogers has been allowed to report Citytv and OMNI data together in its group aggregated conventional TV returns filed annually with the Commission.

We respectfully submit that if Rogers seeks to exclude its OMNI television stations from the group-based licensing regime, then it should be required to resubmit aggregated conventional TV returns for the 2008, 2009, and 2010 broadcast years containing Citytv data only. This should be done well in advance of the public hearing in April. In the same vein, Rogers should be required to provide disaggregated Citytv (i.e., excluding the OMNI stations) data in its future annual returns filed with the Commission so interveners can properly assess the impact of the group-based licensing policy framework on a going-forward basis.

Moreover, the Creative Community notes that since aggregated conventional TV returns for Corus are not available publicly, interveners are missing important and relevant conventional TV data for the Corus group in assessing its group CPE and PNI proposals—data that is not necessarily available on the public file as part of Corus' group licence renewal application.

Absence of 2010 data for individual specialty and pay TV services

Another problem for interveners in this proceeding is the fact that the Commission has not yet publicly released statistical and financial summaries for individual specialty and pay television services for the broadcast year ended August 31, 2010.

The availability of statistical and financial summaries for individual specialty and pay television services for 2010 (including the related programming and production expenses data for each service) is absolutely critical for interveners to assess the broadcast groups' CPE and PNI proposals. That's because, as the Commission is aware, the broadcast groups have proposed using an average of the previous three years' gross revenues of the group in setting the CPE and PNI levels for the first year of the new licence term. Since the new licence term will commence on September 1, 2011, the broadcast groups have proposed using actual 2009, actual 2010, and projected 2011 revenues as the base years for averaging revenue in setting the group CPE and PNI levels for Year 1 of the new licence term.

Without commenting at this point about the appropriateness of partially using revenue <u>projections</u> in setting the CPE and PNI levels for year 1 of the new licence term, clearly the absence of 2010 data on the public record represents a significant barrier for interveners to accurately and properly verify and assess the broadcast groups' proposals.

<u>Lack of 2010 data for group-qualifying specialty and pay TV services</u>

Only one broadcast group, Shaw Media, has provided on the public file of this proceeding 2010 actual CPE data for its specialty TV services that are part of the group licence renewal. This makes it very difficult for interveners to determine whether the broadcast groups' proposals with respect to CPE and PNI for the new licence term are in line with recent historical spending.

Moreover, no broadcast group has provided on the public file of this proceeding actual 2010 revenue numbers for each qualifying specialty or pay TV service that is part of the group licensing model. Without complete 2010 revenue numbers for each group, interveners are unable to verify the three-year average revenue numbers put forward by the broadcast groups for the purposes of setting CPE and PNI levels in the first year of the new licence term.

Without 2010 actual revenue data, it is also very difficult for interveners to assess whether using the 2009-2011 period for the purpose of averaging revenue, as the broadcast groups propose, compared to using the 2007-2009 period, as the Commission originally proposed in BRP 2010-167, will result in higher or lower Canadian programming and PNI spends in Year 1 of the new licence term.

<u>Lack of 2011 revenue and CPE projections for group-qualifying services on the public file</u>

Another problem for interveners is the lack of 2011 revenue and CPE projections on the public file of this proceeding. 2011 revenue projections for each of the qualifying services in a given corporate group have been provided on the public file for only the CTVgm group. And no CPE projections are available publicly for any of the broadcast groups.

As stated above, without detailed projected 2011 revenue and CPE data, it is very difficult for interveners to assess what impact using the 2009-2011 period for the purpose of averaging revenue will have on CPE and PNI levels in Year 1 of the new licence term compared to using another time period.

In the Creative Community's view, if the broadcast groups wish to use 2011 revenue projections in part to set the group CPE and PNI levels for the first year of the new licence term, then surely this information must be available to interveners in order for them to properly assess the broadcast groups' proposals.

<u>III. PICKING THE RIGHT YEARS FOR AVERAGING HISTORICAL GROUP REVENUE AND HISTORICAL CPE AND PNI SPENDING</u>

<u>Using 2011 revenue projections is inappropriate to set CPE and PNI levels for Year 1 of the new licence term</u>

Given that the first year of implementation of the new group CPE requirement will be a transitional year for both conventional television and Category B services, which currently do not have CPE requirements, the broadcast groups have proposed that the first year's CPE requirement should be applied against the previous three years' gross revenues of the group. They argue that this would average out any material variances in both spending on Canadian programming and

gross revenues over the previous three years and provide a "more accurate and reasonable CPE requirement."

The broadcast groups note that there have been significant fluctuations in broadcasting revenues and programming expenditures over the past two years, in large part stemming from the global economic recession in 2008 and 2009, which has been followed with a measurable recovery over the past year. Therefore, in order to smooth the transition to the new CPE regime to take effect on September 1, 2011 and to avoid undue disruption in spending obligations resulting from the large variances in revenues and programming expenditures from 2008 to 2011, the broadcast groups have proposed that, for the first year of the new licence term only, the determination of the appropriate CPE requirement for conventional television be calculated on the basis of the previous three years' gross revenues of the undertakings comprising the corporate group (i.e., 2009, 2010 and 2011.)

The broadcast groups propose that the CPE dollar requirements for each qualifying service in Year 1 of the new licence term would also be calculated as a percentage of the average gross revenues of the service over the previous three years (i.e., 2009, 2010 and 2011.). For specialty and pay TV services, this would be determined by multiplying the authorized CPE percent for each service by the average of its previous three years' revenues. The required CPE dollar requirement for each conventional television station would be based on the calculated percent, as described above, multiplied by the average of the previous three year's gross revenues of the station.

For consistency, the broadcast groups have proposed the same approach for setting required Year 1 expenditures for PNI.

The broadcast groups argue that their jointly developed proposed approach for setting CPE and PNI levels in the first year of the licence term is consistent with paragraphs 49 and 50 of BRP 2010-167, where the Commission indicated that it will utilize the actual spending over the previous three years so as not to impose additional obligations on the groups beyond their recent historical expenditures.

CRTC staff did not appear to question or challenge the broadcast groups in the deficiency process about why they have chosen the 2009, 2010, and 2011 broadcast years for averaging group revenues. Commission staff did, however, seek projected revenues for all services included in each group's projected 2011 revenue total (data which, with the exception of CTVgm, are not available on the public file) and the underlying assumptions used to arrive at the projected revenue amounts.

Nevertheless, the Creative Community questions the appropriateness of partially using revenue projections (i.e., for 2011), rather than actual numbers, in setting the CPE and PNI levels for Year 1 of the new licence term. Projections are just that, projections. They sometimes ultimately have no resemblance to actual results.

And because actual 2011 results will not be known until early in the first year of the new licence term, it would likely be too late for the Commission to make any adjustments to Year 1 CPE and PNI requirements should the 2011 projected revenue numbers provided by the broadcast groups (most of which have provided them in confidence) turn out to be significantly lower than actual results. (It is worth noting that under the Commission's normal schedule for making statistical and financial data for television undertakings public, 2011 results would not be available to the Creative Community and others until several months into 2012, or more than halfway through the first year of the new licence term.)

Moreover, using 2011 revenue projections in place of a previous year's actual revenue results makes it impossible for the Commission to determine whether using the 2009-2011 period for the purpose of averaging revenue, compared to using another period containing only actual results, will result in higher or lower Canadian programming and PNI spends in Year 1 of the new licence term.

Our concern with using projected 2011 revenue numbers can be demonstrated by analyzing CTVgm group revenue in recent years, and CTVgm's average group revenues over various recent time periods. According to information filed with its licence renewal application, CTVgm is projecting 2011 group revenue of $1,248,260,000. This is almost $11 million lower than the $1,259,048,668 actual group revenue earned by CTVgm in 2008.

Therefore, by using the three-year period from 2009 to 2011 to calculate average group revenue, CTVgm is effectively reducing required CPE and PNI spending for Year 1 of the new licence term. Based on our calculations (some of which are based on estimated numbers), using the following different time periods yield average group revenue numbers that are higher than that proposed by CTVgm (i.e., $1,209,975,000):

- 2008-2010: more than $3 million higher;
- 2007-2009: more than $25 million higher; and
- 2007-2011 (5-year period): more than $15 million higher.

This limited analysis appears to show that the time period that is chosen to average group revenue has the potential to significantly alter group CPE and PNI spending requirements in Year 1 of the new licence term.

In effect, by using the years 2009, 2010, and 2011 for the purpose of averaging revenues in order to set group CPE and PNI spending requirements in Year 1 of the new licence term, the broadcast groups appear to be attempting to capitalize on using the effects of the economic recession (i.e., a sharp decline in revenue and therefore significant reductions in spending on Canadian content), and the relatively slow recovery, to achieve lower group CPE and PNI spending requirements in the first year of the new licence term.

This is difficult for the Creative Community to accept given that these licence renewals were supposed to have occurred prior to when the economic recession hit, but were delayed several times for various reasons. In fact, some programming services that are part of this group licensing proceeding will have operated for 11 years under their current licence terms by the time the new licence term begins on September 1, 2011.

Accordingly, as a matter of principle and given the unpredictable nature of projections, the Creative Community cautions the Commission against partially using revenue <u>projections</u> (i.e., for 2011), rather than actual numbers, in setting required CPE and PNI spending levels for Year 1 of the new licence term.

The Creative Community urges the Commission to use a time period for averaging revenues that takes into account the effects of the economic recession and results in fair and reasonable group CPE and PNI spending in Year 1 of the new licence term. For example, it may be more appropriate to use a longer time period for averaging revenues that includes one or more years prior to the recession (such as 2007 and 2008), as opposed to only including the 2009, 2010, and 2011 recession or near-post recession years proposed by the broadcast groups. As stated above, it is very difficult for the Creative Community to make specific proposals with respect to which years to use for averaging revenues given the absence of complete publicly available data.

Notwithstanding our concerns, should the Commission nevertheless conclude that it is appropriate to use 2011 projected revenue numbers in setting CPE and PNI spending levels for Year 1 of the new licence term, we encourage it to seek year-to-date actual numbers from the broadcast groups at the public hearing so it can assess whether the projections are consistent with actual trends.

The time period used to assess recent historical CPE and PNI spending is critical

The Creative Community notes that the recent historical CPE and PNI spending of a broadcast group can, and likely does, vary materially depending on the time period used to measure historical spending. Specifically, the economic recession caused broadcasters to reduce or delay Canadian programming expenditures until the economy improved. The effects of the economic recession have, therefore, materially affected spending by broadcast groups on Canadian programming and programs of national interest in recent years.

Given the absence of complete recent historical CPE and PNI spending data available to interveners on the public file, it is very difficult for the Creative Community to assess whether the time period proposed by the broadcast groups is appropriate, or whether a more appropriate time period should be used to calculate recent historical spending.

Accordingly, we urge the Commission to choose a time period for averaging recent historical group CPE and PNI spending that results in fair and reasonable group CPE and PNI requirements in the new licence term.

IV. ANALYSIS OF SPECIFIC CPE AND PNI PROPOSALS MADE BY EACH BROADCAST GROUP

10% annual flexibility on under-expenditures on group CPE and PNI

Each of the broadcast groups has proposed conditions of licence allowing for some flexibility with respect to expenditures on its group CPE, consistent with the existing approach for specialty and pay television services. However, they are also seeking to extend this flexibility to required PNI spending. (This kind of flexibility has never been applied to specific categories of programming.)

Specifically, the broadcast groups have sought the ability to underspend (by 10%) or overspend (no limit) on CPE and/or PNI in each broadcast year (excluding the final year of the licence term), provided that the licensee expends the total of the minimum required expenditures (on both Canadian programming and PNI) by the end of the licence term.

The Creative Community notes that in deficiency letters to the broadcast groups, the CRTC asked each broadcast group the following question:

> The Commission notes that you have proposed conditions of licenses allowing for under-expenditures or over-expenditures on CPE of up to 10% in each broadcast year, consistent with the current flexibility offered to Category A specialty services. Given the expenditure flexibility provisions incorporated into the group-based licensing framework please elaborate as to why you feel a flexibility of 10% is warranted for all specialty and conventional services that qualify within the Commission's group-licensing policy?

The Creative Community is not opposed to the broadcast groups' request for an annual 10% flexibility with respect to any under-expenditure on group CPE and/or PNI. However, we respectfully submit that this request would provide the broadcast groups with a significant level

of additional flexibility over and above the already significant expenditure flexibility provided to them in the group-based licensing policy framework.

The Commission should, therefore, assess this request in the context of the overall proposals made by each of the broadcast groups in their licence renewal applications, including their proposed group CPE and PNI percentage levels and requested changes to various COLs. In other words, each request for regulatory flexibility needs to be balanced against the overall regulatory obligations that will apply to each broadcast group over the new licence term.

General comments about the broadcast groups' CPE and PNI proposals

As the Commission is aware, CTVgm is the only broadcast group that is part of this licence renewal proceeding willing to accept a minimum group CPE of 30% of gross group revenues, per the Commission's preliminary view expressed in BRP 2010-167. All broadcast groups, with the exception of Rogers Media, are prepared to accept a minimum spending level of 5% of group revenues for programs of national interest.

It should be noted that, in support of their respective proposals related to group CPE and PNI, all of the broadcast groups stress the Commission's intention not to impose additional obligations on the groups beyond their recent historical expenditures on Canadian programming, as noted in paragraph 50 of BRP 2010-167.

However, the Creative Community notes that in analyzing recent historical expenditures on Canadian programming leading up to the release of BRP 2010-167, the Commission took the preliminary view that a minimum group CPE level of 30% was consistent with recent historical CPE at the time for each of the designated groups (i.e., CTVgm, Shaw Media, and Rogers Media).

CTVgm states that its understanding of the CRTC's intent in the group licensing framework was that all three corporate groups initially deemed to be subject to the new policy (i.e., CTVgm, Shaw Media, and Rogers Media) would have the same group CPE level. CTVgm argues that since it, Shaw Media, and Rogers Media all compete for the same types of programming (both Canadian and foreign) and for the same advertisers, they should all be subject to the same requirements related to CPE. It adds that if the Commission imposed a threshold for either Shaw Media or Rogers Media that is lower than 30%, fairness dictates that competing groups such as itself should be treated on the same basis.

The Creative Community shares CTVgm's understanding of the Commission's intent in BRP 2010-167. As such, we agree with CTVgm that all broadcast groups should be subject to the same group CPE and the same or similar PNI percentage requirements for the sake of consistency and competitive equity. This ensures that all broadcast groups will be required to spend proportionally the same level on Canadian programming and programs of national interest. This is only fair.

In this regard, we note that all of the groups in this licence renewal proceeding are, or soon will be, part of (or affiliated with, in the case of Corus) very large (and very profitable) vertically integrated companies that have the financial resources to contribute to Canadian programming and programs of national interest at levels that are higher than recent historical spending levels. All of these vertically integrated companies compete with one another on a daily basis. As such, it is only fair that they be subject to the same regulatory obligations.

With respect to PNI, the Creative Community notes that the 5% level for PNI cited by the Commission in BRP 2010-167 was only a <u>preliminary</u> number that took into account recent historical spending on Category 7 (Drama and Comedy) programming only, given the lack of data

available on historical spending on Category 2(b) (Long-form Documentary) and Awards Shows. Specifically, the Commission stated the following in BRP 2010-167:

> The Commission does not, at this time, collect separate expenditure information for category 2(*b*) programs. Consequently, it is not possible to evaluate licensees' past expenditures in this category. Analyzing past expenditures for drama (category 7) only, the Commission has determined that group expenditures of at least 5% of gross revenues over the licence term is appropriate. The large groups will be required to file, as part of their renewal applications, their historical spending on long-form documentaries and award show programming. Based upon its analysis of these past expenditures, the Commission will establish, at licence renewal, a base level spending requirement for programs of national interest and determine whether any increases over the licence term may be necessary.[1]

Our analysis of recent historical spending on PNI, even with the limited information available to us, suggests that a PNI level of 5% of gross group revenue is too low for most of the broadcast groups, and could result in an actual decline in spending in the program categories that make up PNI across the broadcasting system. From our perspective, this would be an inappropriate and unacceptable outcome.

The specific proposals with respect to group CPE and PNI levels made by each broadcast group are discussed in turn below.

CTVglobemedia

Group CPE

CTVgm has proposed a group CPE requirement of 30% of its gross group revenue, on the condition that the other ownership groups are required to spend the same proportion of their group revenues on Canadian programming.

Given the absence of complete historical revenue and CPE data available to interveners on the public file, it is very difficult for the Creative Community to accurately and properly assess CTVgm's group CPE proposal. However, based on our analysis of required and actual CTVgm group spending on Canadian programming in 2008 and 2009 (the only years in which complete group CPE data are publicly available), it appears that a minimum group CPE level of 30% of gross group revenue is appropriate for CTVgm for the new licence term.

However, as noted previously, recent historical required and actual CPE for CTVgm can, and likely does, vary depending on the time period used to measure historical spending. Therefore, the 30% group CPE level for CTVgm is subject to confirmation by the Commission's internal analysis of recent historical spending using various recent historical time periods.

The Production Community is pleased to see that, according to the revenue and programming expense projections filed with CTVgm's group licence renewal application based on a proposed group CPE level of 30%, the proportion of Canadian programming expenditures as a percentage of total programming expenditures is projected to be roughly 50% (i.e., roughly 50:50 Canadian to foreign programming spending ratio). This is consistent with section 3(f) of the *Broadcasting Act*, which states that "each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation

---

[1] *Broadcasting Regulatory Policy CRTC 2010-167*, A group-based approach to the licensing of private television services, March 22, 2010, paragraph 75.

of programming…" It is also consistent with the view we expressed during the group-based licensing policy proceeding that a meaningful group CPE level would act as a natural break on spending on foreign programming.

Group PNI

CTVgm states in its group licence renewal application that it examined its historical expenditures on the categories of programming that make up the broad PNI category and found that "it is in line with the 5% number"[2] initially proposed by the Commission in BRP 2010-167. Accordingly, CTVgm is willing to accept PNI expenditure requirements equivalent to 5% of its gross group revenue, again, on the condition that the same requirement be applied to the other broadcast groups.

However, based on our analysis of actual CTVgm group spending on PNI in 2008 and 2009 (the only years in which complete group PNI data are publicly available), it appears that a minimum group PNI level of 5% of gross revenues is too low for CTVgm for the new licence term.

According to the revenue and programming expense projections filed with CTVgm's group licence renewal application based on a proposed group PNI level of 5%, spending on PNI would be $60.5 million in Year 1 of the new licence term (2012), rising to $69.6 million in Year 5 (2016). This is significantly lower than the $89.8 million and $93.7 million actually spent by the qualifying services in the CTVgm group in 2008 and 2009 respectively [excluding Canada Media Fund ("CMF") top-up].

Based on our limited two-year analysis (i.e., 2008 and 2009), CTVgm's PNI spending level was actually about 7% of its gross group revenue. Given CTVgm's view that the same CPE level should apply to all broadcast groups, we believe the same principle should apply with respect to PNI levels for broadcast groups with a similar mix of assets. Accordingly, based on our limited analysis of recent historical spending on PNI by the other broadcast groups, we submit that a 10% group PNI requirement is more appropriate for CTVgm for the new licence term, rather than the 5% level it has proposed.

Shaw Media

Group CPE

Shaw Media states as part of its group licence renewal application that it is not prepared to accept a group CPE requirement of 30% of its gross group revenue because that level would not reflect its recent historical expenditures on Canadian programming, but would instead impose a higher CPE level on Shaw Media. This, it argues, would be contrary to the CRTC's intentions expressed in BRP 2010-167. The broadcast group has, therefore, proposed a group CPE level of 29% of its gross group revenue, which it regards as more in line with its recent historical spending.

Given what it calls "the noted distortions" in the years referenced in BRP 2010-167, Shaw Media has prepared its group CPE analysis using a two-year time period applied on a lagged basis against prior year revenues per current CPE practice as it applies to Category A specialty services (i.e., the years 2009 and 2010). Using this time period, Shaw Media's analysis shows that the "recent historical expenditures" for qualifying services against regulated revenues result in a group CPE level of approximately 29%.

---

[2] As quoted from CTVgm letter to the CRTC dated November 10, 2010 containing additional information in response to certain questions posed by the CRTC in a letter dated August 31, 2010, at page 6.

The Creative Community reiterates that given the sharp decline in revenue and therefore significant reductions in spending on Canadian content, the recent historical CPE spending level for Shaw Media can, and likely does, vary depending on the time period used to measure historical spending. Given the absence of complete historical revenue and CPE data available to interveners on the public file, it is very difficult for the Creative Community to accurately and properly assess Shaw Media's group CPE proposal.

However, given the principle expressed above that all broadcast groups be subject to the same group CPE level, we submit that a 30% group CPE requirement is more appropriate for Shaw Media for the new licence term.

According to the revenue and expense projections filed with Shaw Media's group licence renewal application based on proposed group CPE and PNI levels of 29% and 5% respectively, the group will achieve a PBIT margin of approximately 23% in each year of the new licence term. The Creative Community submits that given the projected profits that Shaw Media is expected to earn in the new licence term, it is able to assume a group CPE level of at least 30% for the new licence term.

The Creative Community also notes that, according to the revenue and programming expense projections filed with Shaw Media's group licence renewal application based on a proposed group CPE level of 29%, the proportion of Canadian programming expenditures as a percentage of total programming expenditures is projected to be roughly 49% (i.e., roughly 49:51 Canadian to foreign programming spending ratio). Imposing a group CPE level of at least 30% on Shaw Media for the new licence term would likely result in a ratio closer to 50:50, which would be more consistent with section 3(f) of the *Broadcasting Act*, as cited above.

Group PNI

In its group licence renewal application, Shaw Media states that it is willing to accept PNI expenditure requirements equivalent to 5% of its gross group revenue. It is noteworthy that the broadcast group provided little to no discussion of the PNI requirement in its application documents.

Based on our analysis of actual and estimated[3] Shaw Media group spending on PNI in 2008 and 2009 (the only years in which complete group PNI data are publicly available), it appears that a minimum group PNI level of 5% of gross revenues is much too low for Shaw Media for the new licence term.

According to the revenue and programming expense projections filed with Shaw Media's group licence renewal application based on a proposed group PNI level of 5%, spending on PNI would be $45 million in Year 1 of the new licence term (2012), rising to $50.7 million in Year 5 (2016). This is significantly lower than the estimated $97.9 million and $68.6 million actually spent by the qualifying services in the Shaw Media group in 2008 and 2009 respectively (excluding CMF top-up).

Based on our limited two-year analysis (i.e., 2008 and 2009), Shaw Media's PNI spending level was actually about 10% of its gross group revenue. However, recent historical expenditures by the Shaw Media group on programs of national interest can, and likely does, vary depending on the time period used to measure historical spending. As such, we urge the Commission to use a time

---

[3] We have had to estimate PNI spending by Shaw Media's conventional TV services for 2008 and 2009, since the E! Network stations are no longer part of the Shaw Media group but are included in spending data contained in Canwest's aggregated group 2008 and 2009 conventional TV returns.

period to assess recent historical spending on PNI that results in a fair and reasonable PNI level for Shaw Media for the new licence term.

Corus Entertainment

Group CPE

In its group licence renewal application, Corus has proposed a group CPE requirement of 29% of gross revenues of the group, which it considers to be more in line with its historical spending than the minimum 30% level identified by the Commission in BRP 2010-167. It is important to note that Corus' 29% group CPE proposal is conditional on the Commission granting all of the licence amendments it is proposing for its various programming undertakings. Corus' proposal appears to be an "all or nothing" scenario.

Corus notes that in establishing a preliminary group CPE obligation of 30% in BRP 2010-167, the Commission had only reviewed recent historical CPE of the designated groups (namely CTVgm, Shaw Media, and Rogers). In other words, it did not assess Corus' spending on Canadian programming in 2007, 2008, and 2009. This is especially important, Corus argues, given that the Commission's determinations in BRP 2010-167 did not take into consideration the particularities of the Corus group of television services, which does not exactly mirror the types of television services owned by the other broadcast groups that are part of this group licensing proceeding. Specifically, it notes that it has only three over-the-air television services, all of which operate in small markets. Moreover, it is the only group applicant with pay television services included in the group licensing model, and those services are fully discretionary and do not have access to any advertising revenues.

In its Supplementary Brief filed with its group licence renewal application, Corus states that "all groups recognize that each group is structured differently and is subject to unique circumstances that may warrant tailored CPE and PNI targets."[4] We note, however, that this is incorrect, since CTVgm specifically objects to different CPE and PNI levels being applied to different groups, a principle with which the Creative Community agrees.

Corus argues that a blanket application of a single CPE target and a single PNI objective to all ownership groups should not be the objective of this proceeding.

In addition, Corus argues that a group CPE obligation of 29% represents a significant incremental commitment to Canadian programming, exceeding the average CPE of 27.75% that the Corus group would otherwise be expected to achieve in the new licence term in the absence of a group licensing framework (and assuming maintenance of existing CPE COLs).[5]

Corus also proposes to streamline CPE obligations for its individual specialty and pay services, without compromising overall group-based support for Canadian programming. Specifically, each Category A would be subject to a CPE obligation of 30% and each Category B service would be subject to an individual CPE obligation of 15%. Corus notes that at these levels, the total CPE contribution of all Category A and Category B services, taken together, represents roughly the

---

[4] Corus Entertainment group licence renewal application, Supplementary Brief, at page 18.

[5] The Production Community notes that figures quoted in Corus' Supplementary Brief (at page 23) do not appear to match those contained in the "Aggregate Financial Projections" tables filed with Corus' licence renewal application. For example, in its Supplementary Brief, Corus states that in the first year of the new licence term (2012) under the 29% group CPE scenario, it forecasts a group CPE of $116.4 million. Taking into account its revenue projections over the licence term, its group CPE is projected to rise to $135.9 million by Year 5 (2016). However, the "Aggregate Financial Projections" tables filed with Corus' licence renewal application show that group CPE would be $101.1 million in Year 1 of the new licence term (2012), rising to $119.6 million in Year 5 (2016).

same dollar total as the sum of all the individual CPE obligations as calculated based on existing CPEs over the last three years for Category A services, or on historical spend over the last three years for Category B services.

Corus stresses that its commitment to accept COLs implementing a group CPE requirement of 29% and its proposal to standardize the CPE obligations for all Category A services at 30% and all Category B services at 15% are conditional on approval of its related requests to amend various COLs of its Category A services.

Corus points out that if the Commission is unwilling to grant the proposed amendments to its Canadian content exhibition obligations and various other COLs, then its proposals for the CPE COLs must revert, by necessity, to the following "status quo" implementation of the group licensing framework:

- A group CPE obligation of 27.75% for each year for the new licence term;
- An individual CPE obligation of 28% for each Category A specialty and pay service (Corus notes that this alternative proposal retains the streamlining and simplification inherent in a single CPE, but reflects the lower group CPE target that it would be able to assume);
- An individual CPE obligation for each Category B service of 15%; and
- All other aspects of the group licensing framework would continue to apply under this "status quo" implementation of the group licensing framework.

As expressed above, the Creative Community notes that the recent historical CPE spending level for Corus can, and likely does, vary depending on the time period used to measure historical spending. But given the absence of complete historical revenue and CPE data available to interveners on the public file, it is very difficult for the Creative Community to accurately and properly assess Corus' group CPE proposal.

However, given the principle expressed above that all broadcast groups be subject to the same group CPE level, we submit that a 30% group CPE requirement is more appropriate for Corus for the new licence term. The Creative Community is not persuaded by Corus' arguments that it should be subject to a lower CPE level than that applied to the other broadcast groups. While Corus does not have significant conventional TV assets, its specialty and pay TV services compete with each of the other broadcast groups for subscribers, audiences, and revenues. As such, it is only fair that Corus be subject to the same CPE level as the other broadcast groups. It also means that given the smaller nature of the Corus group, its dollar CPE requirement will be much smaller than that of the other, larger groups.

The Creative Community questions Corus' claim that its proposal to standardize CPE requirements for all of its group Category A services at 30% and all of its qualifying Category B services at 15%, taken together, represents roughly the same dollar total as the sum of all the individual CPE obligations as calculated based on existing CPEs over the last three years for Category A services, or on historical spend over the last three years for Category B services. Given the absence of complete historical revenue and CPE data available to interveners on the public file, it is very difficult for the Creative Community to accurately and properly assess this aspect of Corus' group CPE proposal.

Moreover, the Creative Community wishes to point out an apparent discrepancy between the 29% and 27.75% group CPE levels proposed by Corus and the corresponding revenue and programming expense projections filed with its group licence renewal application. According to data contained in the "Aggregate Financial Projections" tables based on proposed group CPE and

PNI levels of 29% and 5% respectively, projected group CPE (in dollars) for the new licence term appears to equate to approximately 25% of previous year's gross group revenue, not 29%. Similarly, according to data contained in the "Aggregate Financial Projections" tables based on proposed group CPE and PNI levels of 27.75% and 5% respectively, projected group CPE (in dollars) for the new licence term appears to equate to approximately 23% of previous year's gross group revenue, not 27.75%.

Group PNI

As part of its group licence renewal proposals, Corus is willing to accept PNI expenditure requirements equivalent to 5% of its gross group revenue.

As detailed in the financial projections it has provided to the Commission as part of its group licence renewal application, Corus' 5% PNI commitment means that expenditures by the Corus group on programs of national interest will be $55.3 million in Year 1 of the new licence term (2012), rising to $67.1 million in Year 5 (2016). Over the five-year licence term, total expenditures on PNI would be over $312 million. Corus argues that this represents a significant contribution to the Canadian broadcasting system, especially since all of these expenditures will be borne by its Category A specialty and pay services and its Category B services with more than 1 million subscribers given the nature of its television holdings.

Corus also notes that this is the first time that its specialty and pay services will all be subject to a regulatory obligation to support specific program categories with required levels of spending. Moreover, unlike the other groups participating in this group renewal process, Corus notes that it does not have the ability to support this objective with its conventional television services. In the interest of competitive equity, Corus argues that it must not be burdened by a PNI obligation higher than that of any of its competitors.

Based on our analysis of actual and estimated[6] Corus group spending on PNI in 2008 and 2009 (the only years in which complete group PNI data are publicly available), it appears that a minimum group PNI level of 5% of gross revenues is much too low for Corus for the new licence term.

If one were to apply the proposed 5% PNI level against the revenue projections filed with Corus' group licence renewal application, one would get required PNI spending (in dollars) of $21.7 million in Year 2 of the new licence term (2013). This is significantly lower than the estimated $36.7 million and $35.9 million actually spent by the qualifying services in the Corus group in 2008 and 2009 respectively (excluding CMF top-up).

Based on our limited two-year analysis (i.e., 2008 and 2009), Corus' PNI spending level was actually about 10% of its gross group revenue. However, recent historical expenditures by the Corus group on programs of national interest can, and likely does, vary depending on the time period used to measure historical spending. As such, we urge the Commission to use a time period to assess recent historical spending on PNI that results in a fair and reasonable PNI level for Corus for the new licence term.

The Creative Community also wishes to point out an apparent discrepancy between the 5% PNI level proposed by Corus and the revenue and programming expense projections filed with its group licence renewal application. According to data contained in the "Aggregate Financial Projections" tables based on proposed group CPE and PNI levels of 29% and 5% respectively,

---

[6] Given that aggregated conventional TV returns are not available publicly for the Corus group, we have had to estimate PNI spending by Corus' conventional TV services for 2008 and 2009. Since Corus' conventional TV stations are CBC affiliates, and given their small size, we have assumed that these stations did not spend any money on PNI in 2008 and 2009.

spending on PNI would be $55.3 million in Year 1 of the new licence term (2012), rising to $67.1 million in Year 5 (2016). This equates to approximately 14% of previous year's gross group revenues, not 5%. Similarly, according to data contained in the "Aggregate Financial Projections" tables based on proposed group CPE and PNI levels of 27.75% and 5% respectively, spending on PNI would be $50.1 million in Year 1 of the new licence term (2012), rising to $53.7 million in Year 5 (2016). This equates to approximately 12% of previous year's gross group revenues, not 5%.

Rogers Media

Group CPE

In its Supplementary Brief filed with its group licence renewal application, Rogers argues that, while it supports the Commission's group-based CPE approach, it remains of the view (first expressed in the group-based policy proceeding) that "group-based CPE levels should be determined by the circumstances of each broadcast group and need not be uniform across all groups."[7] Specifically, Rogers submits that, consistent with the CRTC's past practice in setting CPE requirements, the Commission should take into account the size and structure of each television group and its overall financial health in establishing the group CPE level.

In this regard, Rogers notes that given its structure and asset mix, it will not be able to derive the same level of financial and programming benefits from the new group-based licensing framework as other larger television groups that have a number of programming services operating in complementary genres (e.g., drama, documentaries, children, etc.). For example, Rogers notes that its group revenues were only 17% of that of Shaw Media's qualifying group services in 2009, and only 13% of CTVgm's. Rogers submits that the disparity in size between the two dominant groups on the one hand, and the Rogers group on the other hand, "is a clear indicator that a more calibrated approach is required to determine the appropriate target CPE for the Rogers Group."[8]

Rogers also argues that imposing uniform obligations across each television group for the sake of "consistency" or "competitive equity" ignores the very real threat and impact such an approach "will have on the future viability of smaller television groups like Rogers and our ability to contribute to the competitive balance and diversity in the Canadian broadcasting system."[9]

Accordingly, Rogers argues that it is not in a financial position to support a group CPE level of 30%, most of which will have to be borne by its Citytv stations. It insists that requiring "such massive increases in spending on Canadian programming by the Citytv stations [by imposing a 30% group CPE requirement] is unprecedented and punitive when those stations are currently in a loss position and will remain that way for several more years despite their revenues [projected to grow] much faster than the rest of the industry."[10]

Given all of the above, Rogers has proposed a group CPE requirement of 25% of the gross broadcasting revenues of the group. It argues that this proposed level "provides a sustainable

---

[7] Rogers group licence renewal application, Supplementary Brief, at page 1.
[8] As quoted from Rogers' submission as part of its group licence renewal application titled "Rogers' Proposals Respecting Canadian Programming Expenditures and Programs of National Interest", at page 6.
[9] Rogers group licence renewal application, Supplementary Brief, at page 2.
[10] As quoted from Rogers' submission as part of its group licence renewal application titled "Rogers' Proposals Respecting Canadian Programming Expenditures and Programs of National Interest", at page 10.

business model for the next licence term, while making significant contributions to Canadian programming."[11]

Consistent with the principle expressed above that all broadcast groups be subject to the same group CPE level, we submit that a 30% group CPE requirement is appropriate for Rogers for the new licence term. This approach ensures that Rogers will be required to spend proportionally the same level on Canadian programming as the other broadcast groups, which it competes with for programming, audiences, and revenue. This is only fair. It also means that given the smaller nature of the Rogers Media group, its dollar CPE requirement will be much smaller than that of the other, larger groups.

The Creative Community also notes that in analyzing recent historical expenditures on Canadian programming leading up to the release of BRP 2010-167, the Commission took the preliminary view that a minimum group CPE level of 30% was appropriate for all the designated groups, including Rogers Media.

Group PNI

Rogers argues that it cannot meet PNI expenditure requirements of 5% of group revenues over the new licence term. In support of its position, the broadcast group notes that given its structure and mix of assets, and as a small group, it is unable to amortize PNI costs across a number of markets and windows, which makes PNI programming more financially challenging for its group than the other larger groups. It adds that its situation is even more challenging given that it does not have access to any significant level of funding from the CMF, which it notes represents a critical component of financing for programs of national interest.

Moreover, Rogers argues that supporting PNI at a level of 5% would be inconsistent with its local programming strategy for Citytv. It adds that none of its services currently support programming of national interest in any material way (e.g., Citytv's minimum annual spend requirement for priority programming is $4.1 million) "as this type of programming does not form part of the core programming strategy for Citytv or fall within the nature of service of our specialty channels, particularly OLN and G4."[12]

Accordingly, Rogers submits that it is willing to accept PNI expenditure requirements of 2.5% of its gross group revenue in Year 1 and 2 of the new licence term (2012 and 2013) and 3% in Year 3, 4, and 5 (2014, 2015, and 2016).

As noted elsewhere in this Joint Report, based on the Creative Community's analysis of actual and estimated group spending on PNI in 2008 and 2009 (the only years in which complete group PNI data are publicly available) for CTVgm, Shaw Media, and Corus, it appears that a minimum group PNI level of 5% of gross revenues is too low for each of these groups for the new licence term. Accordingly, we have urged the Commission to set a group PNI spending level for each of these groups for the new licence term that is consistent with actual recent historical spending on PNI.

The Creative Community has also expressed the view that all broadcast groups should be subject to the same or similar PNI spending levels. However, we acknowledge that requiring Rogers Media to adhere to a PNI spending level that is the same or similar to that of the other broadcast groups would be "unreasonably high" (to use Rogers' words) given the mix of assets in the Rogers Media group.

---

[11] As quoted from Rogers' submission as part of its group licence renewal application titled "Rogers' Proposals Respecting Canadian Programming Expenditures and Programs of National Interest", at page 11.
[12] Rogers group licence renewal application, Supplementary Brief, at page 4.

We also note that in analyzing recent historical expenditures on Canadian drama alone leading up to the release of BRP 2010-167, the Commission took the preliminary view that a minimum group PNI level of 5% was appropriate for all the designated groups, including Rogers Media, subject to confirmation once it had obtained spending data on long-form documentaries and awards shows.

Accordingly, the Creative Community suggests that it is reasonable to impose a PNI spending level on the Rogers Media group of 5% of gross group revenue in each year of the new licence term. We respectfully submit that this level takes into account recent historical expenditures and the unique circumstances and differences of the Rogers Media group compared to the other groups.