Writers Guild of Canada

February 9, 2011

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

Submitted via E-Pass

Dear Mr. Morin,

Re: Broadcasting Notice of Consultation CRTC 2010-952 – Group-based Licence Renewal for English-language Television Groups

1. The Writers Guild of Canada (the WGC) is the national association representing over 2000 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. The WGC wishes to **comment** on the above-mentioned Notice of Consultation.

2. The WGC requests the opportunity to appear at the public hearing scheduled to commence on April 4, 2011 in order to further elaborate on the following issues from the perspective of creators of Canadian programming.

Executive Summary

3. The WGC supports the Commission's initial assumption that all broadcast groups should have the same group CPE as the impact will be proportional to each group based upon its revenues and regardless of its asset mix. It appears that 30% of revenues would be an appropriate CPE for all broadcast groups.

4. Group-based PNI CPE proposals of 5% of revenues will result in broadcasters spending less than historical levels on dramas, documentaries and award shows. It appears, based upon the available data, that a PNI CPE of 10% would be more appropriate. The WGC supports the Commission's intention that all broadcasters have the same PNI CPE with the exception of Rogers. Rogers has few specialty services which can carry PNI due to their nature of service. For that reason, the WGC would support a lower PNI CPE of 5% for Rogers. The Commission may feel it necessary to phase-in the PNI CPEs over the licence term for Rogers and CTV.

5. The WGC supports flexibility in year to year spending provided that any over or under spend is balanced from year to year rather than over the course of the licence term.

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6. The WGC does not think that Corus should be merged into Shaw for these proceedings as they are currently separate legal entities that are being separately managed. We have some concerns with Corus being part of group licensing as their asset mix does not lend itself to the regulatory structure of group licensing.

7. The Commission should maintain the variety of specific conditions of licence which apply to individual services in order to support genre diversity. Specific exhibition requirements on conventional services, like the 50% exhibition in the evening period requirement, as well as individual specialty services are clearly necessary to prevent allocation of Canadian programming and specifically PNI to niche broadcasters with small audiences.

8. Category B services which now have to contribute to Canadian programming due to having grown their subscriber base beyond 1 million subscribers should also have to contribute through the exhibition of Canadian programming. These services have benefitted from the Canadian broadcasting system and need to contribute back to the system.

9. The WGC has made a number of comments on requested amendments to conditions of licence for individual services. This is not an exhaustive list given the time constraints. Our primary concern is to ensure that broadcasters do not take advantage of group licensing or the overwhelming amount of data and correspondence to lower their obligations to Canadian programming and Canadian drama.

A Brief History of CRTC TV Policy 1999 – 2010

10. In 1999 the Commission released a new TV Policy. Broadcasters had asked for more flexibility in regulation to allow them to respond to market forces while supporting Canadian programming. By removing expenditure requirements from conventional broadcasters and expanding exhibition requirements to priority programming, those broadcasters were allowed to immediately reduce their expenditure on high quality Canadian drama. The impact was been demonstrable and long term. In 2000 $62 million was spent by English language private conventional broadcasters on drama but in 2009 that figure had dropped to $23 million. As a percentage of revenue the drama expenditure by conventional services dropped from 4% in 2000 to 1.5% in 2009.

11. The Commission tried to rectify the problem in 2004 with the drama incentive program that rewarded broadcasters with additional ad time if they spent money on high quality drama in prime time. The Commission’s goal was to increase the aggregate drama spend to 6% of revenue. The drama incentive program was effectively cancelled when the 2007 TV Policy lifted advertising limits, before it could achieve any measurable results.

12. That 2007 TV Policy acknowledged that there had been a decline in Canadian drama but decided that licence renewal would be the more appropriate time to address the issue. The WGC was disappointed with this response as we had hoped to address the impact of the 1999 TV Policy in 2007 but we were prepared to address it at licence renewal hearings in 2008. That never happened. Due to a busy Commission schedule licence renewal hearings were put off until 2009. Then the global recession hit and it was agreed to give broadcasters one-year renewals and not address major policy issues during a difficult time. It was disappointing but we understood that this was not the right time. The Commission then decided that there were major policy issues that affected all broadcasters given consolidation and changes in business practices and a group licensing approach might make sense. The 2010 TV Policy[1] hearing was the result. During this hearing, the Chair acknowledged that the 1999 TV Policy was a mistake[2]. We welcomed the resulting 2010 TV Policy, which eliminated priority programming and re-introduced expenditure requirements within a group licensing framework, however we were disappointed yet again to learn that we would have to wait for licence renewal hearings before the final expenditure requirements could be decided upon.

13. This brief history of Commission TV Policy is important to understanding the WGC's frustrations and expectations from Group Licence Renewal. We have been waiting since 1999 to rectify what we immediately knew would be a bad decision for the Canadian creative community. With our colleagues in the creative community we have been presenting the Commission with evidence of the decline of Canadian drama since 2003[3]. During this time Canadian broadcasters have been spending more and more on U.S. drama and less and less on Canadian. The ratio of foreign drama to Canadian was 6 to 1 in 2000 but an appalling 24 to 1 in 2009. We are eager to see expenditure requirements implemented. And frustrated that it appears that broadcasters are still trying to minimize their obligations. We hope that this Public Hearing will ensure that Canadian broadcasters live up to their *Broadcasting Act* requirements to make appropriate contributions to the production and exhibition of Canadian programming, and particularly drama and not reduce their support even further.

14. Drama is the post popular form of television programming and when Canadian drama is of the highest quality, well-promoted and consistently scheduled, Canadians love to watch it. In fact, Canadian audiences want television programming that speaks to them about their experiences, values and

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[1] Broadcasting Regulatory Policy CRTC 2010-167

[2] Konrad von Finckenstein: "You say that the 1999 policy has been a mistake and I think we all come to that conclusion." Line 9168, November 23, 2009, Public Hearing, Notice of Consultation CRTC 2009-411

[3] Submission of the Coalition of Canadian Audio-Visual Unions November 28, 2003 re Public Notice CRTC 2003-54, "Addressing the Crisis in Canadian English-Language Drama"

communities. A 2008 Harris-Decima poll[4] revealed that not only is it important to Canadians to have access to Canadian programming that distinguishes itself from foreign programs, they also want to be able to choose programming that reflects national identity. Over three-quarters of Canadians (78%) say that it is important to them to have a choice of television programs that reflect Canadian society, values and perspectives. Canadian television audiences – and those who create, produce, perform and direct Canadian television – all want Canadian programming on the Canadian broadcasting system. The WGC has been working for years to achieve that goal. A higher volume of Canadian drama will give Canadian screenwriters the opportunity to develop their individual skills and for Canada to have a diverse, sustainable talent pool. That too is good for Canadian audiences as it means more high-quality Canadian drama. The WGC wants to ensure that, notwithstanding the additional flexibility being granted to broadcasters under the 2010 TV Policy, that high quality Canadian drama is adequately supported in the Canadian broadcasting system.

2010 TV Policy

15. Shifting to broadcaster group licence renewal makes sense to the WGC. We are well aware that broadcasters are licensing programming for all of their stations in a group and managing their services as a group. Broadcasters have also had the ability to allocate revenues and expenses amongst the group based on how the allocations could best impact regulatory obligations, lowering revenues when they impact Canadian Programming Expenditure ("CPE") requirements and increasing expenditures to fulfil those same CPEs. Group licensing addresses the two needs of reducing potential gaming of the regulations and providing broadcasters with additional flexibility to manage their broadcast services over their corporate group.

16. However, now that broadcasters have submitted their applications we see that they are asking for even more flexibility and even more concessions. Before we get into specifics we ask that the Commission consider this one question: how much flexibility do broadcasters really need given that flexibility frequently comes at the expense of support for Canadian programming? Year after year broadcasters have come before the Commission and asked for flexibility. Priority programming was implemented to give broadcasters flexibility in the Canadian programming that they supported. That flexibility allowed them to spend more and more of their programming budgets on low cost reality shows masquerading as documentaries and on low cost entertainment magazine shows. In 2009 the broadcasters asked for flexibility to combat the recession. They wanted to expand the definition of priority programming to more low cost programming such as reality programming so that they could spend more on U.S. dramas. And even without the requested concessions that's exactly what they did, in

[4] Canadian Attitudes Towards Canadian Programming and CTF Issues, January 25, 2008

extraordinary amounts, despite their drop in revenues. Again and again 'flexibility' seems to be a code word for 'we want to spend less on Canadian drama and documentaries'.

17. The other issue that we would like to address is the data that we have had to work with in considering the questions raised in this Notice of Consultation. The WGC pooled its resources with ACTRA and the DGC (collectively the "Creative Community") and prepared an analysis of the broadcasters' applications and proposals, attached as "Appendix A" hereto (the "Joint Report"). As provided for in more detail in the Joint Report we have had great difficulty in obtaining full, detailed and consistent data. We have concerns about which years of data the broadcasters have chosen to base their proposals upon, particularly as they include years when the broadcasters were taking advantage of a failed television policy. Additionally, we agree with Communications Management Inc. ("CMI") that the choice of year can distort the data however contrary to CMI our conclusion is that the choice to include a major recessionary year is to the detriment of programming rather than broadcasters.

18. In light of the foregoing, our comments in this submission are in places general rather than specific. It is essential that interested stakeholders such as the Creative Community be able to challenge assumptions made by the broadcasters in order to ensure that the elements of the 2010 TV Policy which have the greatest impact on our ability to create high quality Canadian programming, namely supporting Canadian expression and ensuring that broadcasters make an appropriate contribution to the creation and presentation of Canadian programming, are appropriately implemented. We ask that the problems that we have identified be solved and that the Commission release additional or clarified data before the Public Hearing in April. We would be happy to work with Commission staff to achieve that goal should that be helpful.

Key Issues of the Notice of Consultation

19. The WGC will address i) Group-based Canadian programming expenditures, Group-based programs of national interest expenditures, and iii) Groups treated in this proceeding. The other issues of Terms of Trade and Digital Television Transition will be best addressed by other intervenors.

Group-Based Canadian Programming Expenditures ("CPE")

20. In the 2010 TV Policy, the Commission expressed a 'preliminary' view that each corporate group subject to group licensing should have an aggregate CPE of a minimum of 30% of the group's revenues[5]. This CPE was considered to be appropriate given broadcasters' historic spending and the Commission's intent to

[5] ibid Para 50

not impose 'at this time' additional obligations beyond the historic expenditure. In its application CTV agreed to a CPE of 30% but only if the other broadcaster groups had the same requirement. Shaw and Corus however have proposed a group CPE of 29% while Rogers has proposed a group CPE of 25%.

21. The WGC supports the Commission's initial assumption that all broadcast groups should have the same group CPE. As a CPE covers all Canadian programming and is a percentage of revenue it impacts each broadcast group the same regardless of their size or asset mix. Smaller broadcast groups, such as Rogers, will have a smaller dollar figure to spend but will have a proportional commitment comparable to larger broadcast groups such as CTV. This provides a level playing field with competitors. We assume that the Commission took into consideration the fact that some broadcasters had been spending less on Canadian programming than others and would therefore have to spend a bit more in order to meet the common threshold. Specifically, Shaw and Rogers will have to slightly increase their expenditure to meet that threshold. Both corporate groups are now recovering from lower revenues due in part to the previous owners' mismanagement and should not be allowed to benefit from past lower expenditures. For the foregoing reasons, the WGC recommends that the Commission impose a 30% CPE on all broadcast groups.

22. The group CPE is supported by the existing individual CPEs on specialty services and a new CPE on conventional services ("OTA CPE"). We would like to point out to the Commission that the model proposed by the Commission for arriving at the OTA CPE, which has been adopted by the broadcasters, may have some unintended consequences. Past Commission policy has been to increase the CPEs for specialty services at licence renewal based on their PBIT. The basic concept being that as specialties become more profitable they should make a greater contribution to Canadian programming. Meanwhile, the 2010 TV Policy has rightly imposed a CPE on conventional services because they are the primary entertainment platform for mass audiences and the Commission must ensure that they contribute appropriately to Canadian programming. The model proposed by the Commission however, means that if successful specialty services have their CPEs increased based on profitability, the increased CPE will automatically reduce the OTA CPE as there is a maximum CPE of 30%.

23. This problem was initially of grave concern to the WGC. Conventional services are mass audience broadcasters while by their nature specialty services support niche audiences. The WGC does not want to see Canadian programming relegated to the niche specialty services while mass audience conventional services become nothing more than re-broadcasters of the U.S. services. However further analysis raised the question whether individual CPEs (i.e. for specialties or OTA) are relevant at all in this model. Specialty services have 100% flexibility to allocate their CPE to another service in their group and conventional services have the ability to allocate up to 25% of their OTA CPE to other services. What will stop broadcasters from dumping their expenditure requirements on a few niche services with small audiences, freeing up their larger, more profitable services for U.S. programming? Each service has

Canadian programming exhibition requirements. We are hopeful that regardless of the individual CPEs, the exhibition requirements will ensure that programs are broadcast across the services. Conventional services have an evening exhibition requirement that 50% of programming between 6pm and 11pm must be Canadian. Conventional services should fill their exhibition requirements with high quality expensive Canadian programming in order to support their mass audiences. However, there is no guarantee that this is how broadcasters will behave. We encourage the Commission to provide regulatory support as needed to ensure that Canadian dramas do receive air time in prime time on conventional networks when the largest audiences are still watching.

24. We therefore ask the Commission if, under the new 2010 TV Policy, the individual CPEs achieve the result that the Commission had intended. We may not have an answer to this question until we have seen how broadcasters actually implement the new conditions of licence over the next licence term. Monitoring compliance with both the terms of the new conditions of licence and the intent of the 2010 TV Policy will be very important over the next few years. We ask that the Commission both dedicate the necessary resources to performing due diligence reviews of broadcasters' annual reports and providing stakeholders with timely access to such reports. We support the Commission's repeated calls for the power to impose administrative monetary penalties ("AMPs") in order to enforce and ensure compliance. With such a new regulatory framework we anticipate many instances of intended and unintended failures to comply with regulations. Only with AMPs can the Commission ensure that the new policy is being implemented both in spirit as well as by the letter of the policy.

25. Individual exhibition requirements and conditions of licence will become more important than individual CPEs if our assumptions above are right. While broadcasters have requested additional flexibility in a number of instances in exhibition requirements and other conditions of licence, we encourage the Commission to maintain or in fact improve these conditions of licence to ensure that there are appropriate contributions to expenditure and exhibition of Canadian programming across the Canadian broadcasting system. We will address specific concerns below.

<u>Group-based Programs of National Interest Expenditures ("PNI CPE")</u>

26. In the 2010 TV Policy the Commission eliminated priority programming exhibition requirements and instead created a CPE for Programs of National Interest ("PNI"), defined as drama, long-form documentaries and award shows that promote Canadian culture. PNI also includes children's programming that fits within those three categories. It was the Commission's intent to ensure that these hard to finance yet highly popular program categories had the necessary regulatory support to meet the demands of Canadian audiences. It is important to point out that there seems to be some confusion surrounding the meaning of paragraph 75 where the Commission discusses the PNI CPE to be determined at licence renewal:

> 75. 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. [emphasis added]

27. It is our understanding of the foregoing paragraph that as the Commission only had data for drama, if only drama was included in PNI then the CPE would be 5%. However, as long form documentaries and award shows are also included, the Commission needed broadcasters to file their historical spending on these two categories so that they could be added to the data on drama to arrive at the appropriate PNI CPE. The broadcasters have all interpreted this clause to mean that they do not have to commit to a PNI CPE greater than 5%. Except for Rogers, they have quickly committed to a PNI CPE that is actually less than their current expenditure. As set out in the Joint Report, identifying the actual historical expenditure for three years is impossible based on the data filed. However, at 5% of projected revenues the PNI expenditure for CTV, Shaw and Corus would be significantly less than 2008 and 2009 actual expenditures.

PNI CPE by Broadcast Group

Broadcaster	2008 (Actual)	2009 (Actual)	2012 (Proj.5%)	2016 (Proj.5%)
CTV	$89.8 mill	$93.7 mill	$60.5 mill	$69.6 mill
Shaw	$97.9 mill	$68.6 mill	$45 mill	$50.7 mill
Rogers	$2.90 mill[6]	$5.048 mill	$5.17 mill	$10.37 mill
Corus	$36.7 mill	$35.9 mill	$22.2 mill[7]	$24.3 mill

As you can see from the chart above there is a consistent attempt by all of the broadcasters except Rogers (who has been chronically under spending on Canadian drama for the last few years) to reduce their current spending in PNI over the next licence term, despite the Commission's goal to meet at least historical spending and the Creative Community's evidence that broadcasters have been spending less and less on Canadian PNI in favour of U.S. drama.

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[6] Note that the 2008 Actual for Rogers includes PNI for Omni stations as they were included in the data filed by Rogers. They were also included in the 2009 data but we were able to identify Omni expenditures from the Annual Returns.

[7] Note that the Corus projected PNI is based on our calculation of 5% of Corus projected revenue based on a 29% CPE. It is not the figures included in the application, which, as detailed in our Joint Report, appear to be calculated at 14%.

28. The WGC recommends that the Commission set PNI CPE levels that are at least comparable to historical spending and fulfil the basic principle that Canadian programming should not be worse off after this hearing than it had been before the 2010 TV Policy. We feel it necessary to remind the Commission that the data filed by the broadcasters includes the global recession between the years 2008-09. The recession hit all broadcasters and English-Canadian private conventional broadcasters chose to try to maximize revenues by significantly increasing expenditure on foreign drama ($572 million) while significantly decreasing expenditure on Canadian drama ($23.9 million). Based on our incomplete data we suggest that the PNI CPE should be a common 10% of revenues for all corporate groups except Rogers. We acknowledge that Rogers has a different asset mix with substantially fewer services which could air PNI and should on that basis alone have a reduced PNI. CTV might require a phase-in towards a 10% PNI CPE over the licence term. Shaw and Corus appear to be at 10% for historical expenditure of PNI. A PNI CPE of 5% for Rogers would be appropriate. According to our calculations, a 10% PNI CPE might require a phase-in over the course of the licence term. It is difficult to say for certain however as we do not have access to 2010 actual expenditure data at this time or revised revenue projections which might be required as a result of higher PNI CPE. We ask the Commission to conduct the necessary inquiries and ask the broadcasters for the necessary data to be able to address our proposal. We would undertake to review the data once released and prior to the Public Hearing in April to refine our proposal as necessary.

29. Broadcasters have asked for the additional flexibility to under or over spend in any given year their overall CPE or PNI CPE by 10% provided that they have spent the required amount by the end of the term. The WGC has no problem with conditions of licence accommodating year to year fluctuations. However if broadcasters are allowed to balance spending over the term, we can envision broadcasters postponing compliance until the end of the term and then being financially unable to bring the expenditure into compliance in one year. Even if a broadcaster was able to fund a much larger programming budget in the final year of the licence term, such a significant fluctuation would not be good for the television production community or audiences. Retaining a talent pool of skilled Canadian screenwriters and a healthy independent production sector requires predictable funding. The WGC therefore recommends that the Commission allow for 10% under or over expenditures provided that they are recouped in the following year.

Groups Treated in this Proceeding

30. Corus was not originally part of group-based licensing but requested inclusion. The Corus mix of assets is quite different from CTV and Shaw. They have only 3 local conventional stations with which to group their many specialty services. They have a wide variety of specialty services such as YTV, Treehouse, W Network and CMT. Corus objects to several of the principles of the 2010 TV Policy applying to it, including a common group CPE for each broadcaster, based

on the fact that it is different. This raises the question as to the applicability of group licensing for Corus. Corus appears to be applying to be treated as a group not because of group-based licensing of programming, which would be difficult with the variety of distinct services owned by Corus, but to take advantage of common CPEs and PNI CPEs to lower their obligations. Corus has a unique mix of assets compared to the other groups and if it is to take advantage of group-based licensing, it should only do so to the extent that the unique mix of assets is taken into consideration. However, the Commission should seriously consider whether it makes sense to make all of these exceptions or to merely not apply group-based licensing to Corus.

31. The WGC does not support the suggestion by the Commission that Corus might be wrapped into the Shaw corporate group for licensing. These two companies are currently distinct according to their corporate structure and in the way that they are managed and should be licensed separately as long as that continues to be the reality.

Comments on Specific Applications

32. The following comments apply, unless otherwise specified, to only the specific services referred to. The WGC does not have the resources to investigate current compliance with all of the services that are subject to each one of the corporate group applications for licence renewal. We ask that the Commission use its resources to fully investigate compliance prior to renewing the subject licences. The issues raised in the following paragraphs are a few of the WGC's concerns relating to both compliance and some of the requested amendments to conditions of licence for specific services.

CTVglobemedia Inc.

33. As mentioned above, the WGC recommends a common group CPE for all broadcasters and we agree with CTV that 30% is the appropriate rate for overall CPE for all corporate groups. We confirm our recommendation mentioned above that there should be a common PNI CPE of 10%, with the exception of Rogers. While CTV suggests that 'fairness' dictates that they earn the benefit of any lower rates granted to any other broadcaster, an argument can be made that 'fairness' also dictates that concessions can be granted where warranted. CTV is correct in assessing that CTV, Rogers and Shaw all compete for the same programming and advertisers, but Rogers does have a distinctly different asset mix with fewer drama channels and therefore fewer opportunities to exhibit PNI.

34. CTV has applied to have its expectation that it air 2.5 hours of children's programming per week removed from its licence. As the WGC commented on in the past to the Commission, conventional broadcasters other than the CBC have completely abandoned the children's market. While CTV has been meeting its expectation for children's programming, it has been doing so by airing very old programming from the 1970s and 1980s such as "Littlest Hobo" and "Owl

Television", at little or no cost. These programs do not attract audiences and therefore little revenue not because children refuse to watch CTV but because there is little of interest to them on CTV. Conventional broadcasters are intended to be, and have been described by the Commission as, mass audience broadcasters. As such they should support the entire audience and not just adults. To do otherwise is to force families to buy specialty or pay channels such as Treehouse, YTV and Family Channel or be limited to only one conventional broadcaster, CBC. Canadian families deserve choice and they should not be forced to buy bigger cable packages in order to get that choice. As children's programming that is drama, long-form documentaries or award shows are considered PNI, any commitment to PNI for children would be credited towards their PNI. The WGC therefore objects to CTV's request to remove its expectation to air children's programming from its condition of licence. Further, the WGC would like to see all conventional broadcasters with not just expectations but commitments to children's programming as a condition of licence.

35. CTV has requested that expenditures should be reported when contractually committed rather than when expended. We object to this change as such reporting will not always reflect the year when actually expended nor will it reflect that an expenditure has actually been made. Contracts are often amended or cancelled over the life of a program. The purpose of reporting is to track actual broadcaster behaviour rather than intention; the WGC strongly suggests that reporting remain based on actual expenditures.

36. CTV has applied to delete the commitments to independent production, which are part of certain Category A conditions of licence based on the group commitment to 75% of PNI being produced by independent producers. One of the principles of group licensing was that the individual conditions of licence of specialty services would be maintained. For example, Space has a condition of licence that 75% of all original, first-run Canadian programming other than news and current affairs is acquired from unrelated producers. Maintaining this condition of licence would ensure that whatever allocation of the group PNI CPE was assigned to Space, 75% of it would be independently produced. The WGC strongly recommends that the independent production commitments of CTV's category A services are maintained.

37. In the 2010 TV Policy the Commission decided that those Category B services with more than 1 million subscribers would now be part of the group licensing model and contribute to the group CPE and the PNI CPE. It asked CTV whether it would be appropriate to require additional spending obligations or exhibition obligations on those services. CTV replied in its application that it would not be appropriate because the Category B services were licensed in an open entry environment with no guarantee of carriage and that to impose obligations on established Category B services but not new entrants would create an uneven playing field. However, the new policy was meant to only add new obligations to support Canadian programming on those Category B services that were successful enough to have over 1 million subscribers. They have benefitted from

the Canadian broadcasting system and should now contribute back into it. The WGC believes that it is entirely appropriate for these Category B services to have Canadian programming exhibition and expenditure requirements as well as contribute to PNI CPE and overall CPE. We leave it to the Commission to establish with CTV the appropriate exhibition and expenditure requirements for each service based on the nature of that service. However, as a principle, successful Category B services should help ensure access to Canadian programming through exhibition requirements.

38. As mentioned above in paragraph 23, given the flexibility built into the group licensing CPE and PNI CPE, specific conditions of licence such as the narrative description, exhibition requirements and other conditions are essential to ensure that appropriate contributions to Canadian programming and PNI are made across the Canadian broadcasting system. Specific conditions of licence are also essential to maintain genre diversity within the system.

39. Bravo! does not have a specific narrative description of its licence. Its nature of service is “performance and drama programming, as well as documentary and discussion”[8]. That description could cover almost any kind of programming. However, from the Bravo! website its brand has always been: **“**Bravo! was created to fill the void of interesting and relevant cultural programming. This innovative channel covers all aspects and facets of the arts, including; music, ballet, literature, drama, visual arts, modern dance, opera, architecture, the art of talk, and much more. Without a narrative description which is more suggestive of its branding, it will be harder for the Commission to enforce Bravo!’s conditions of licence. For example, we question whether reruns of the U.S. programs “Desperate Housewives”, “Law and Order” and “Without a Trace”, which have been amortized across CTV’s various services including Bravo!, is appropriate for an arts and culture channel. The diversity of the Canadian broadcasting system is dependent on including specific services such as an arts and culture channel. Without specific and enforced natures of service, specialty services will become rerun channels for U.S. programming. This may be cost-effective for Canadian broadcasters but Canadian audiences deserve better. The *Broadcasting Act* requires more from Canadian broadcasters.

40. CTV has requested that Bravo!’s conditions of licence be amended to expand its allowed categories of programming. This should only be allowed on condition that CTV agree to a more specific nature of service definition consistent with Bravo!’s branding. CTV has requested removal of Bravo!’s cap on U.S. drama in prime time. If the Commission looks at the current Bravo! schedule it will see that there is quite a lot of U.S. drama in and around prime time including “Desperate Housewives” at 3pm each weekday and “Law and Order” each week night at 11pm. If the cap was lifted it is very likely that these programs would end up in prime time, edging out the Canadian arts programs such as “At the Concert

[8] Decision CRTC 1994-281

Hall" and "Arts and Minds". CTV has also requested that Bravo!'s Canadian programming exhibition requirement be lowered from 60% to 55%. This would again allow for more reruns of U.S. crime procedurals in the schedule. The 2010 TV Policy confirms that specialty services are not to be part of the lowering of exhibition requirements which are to apply to conventional services. Specialty services will continue to be individually applied. The WGC urges the Commission to maintain the cap on U.S. drama and the current Canadian programming exhibition requirements in order to maintain Bravo! as a distinct service.

41. We notice that CTV is requesting minor amendments to the narrative description of MTV Canada. Our concern is that current programming on MTV Canada does not appear to comply with the narrative description of 'talk programming' as it is now or will be amended. "Jersey Shore" and "Pimp My Ride" are not talk shows. We are concerned about genre creep and the broadcasters' apparent disrespect for their conditions of licence. We ask that with services such as MTV Canada, that the Commission question the broadcasters and investigate compliance before renewing the licence.

42. CTV has requested that Comedy Network have its licence amended to increase their cap on animation from 10% per month to 25% per month, lower their Canadian programming exhibition from 60% to 55% and remove the requirement that movies of the week and feature films must be Canadian. The WGC does not object to increasing the amount of animation on Comedy Network provided that the exhibition requirements are not reduced and the requirement that MOWs and feature films are Canadian is not deleted. As mentioned above, it is important that Comedy Network remain a distinct service and one that has a significant place for Canadian comedy in particular. Removing the limitation on MOWs and feature films would open the schedule to "Groundhog Day" and "Caddyshack". While these are funny films they should not be taking the place of Canadian comedy programs such as "Rick Mercer Report" and "Corner Gas".

<u>Shaw Media Inc.</u>

43. As mentioned above, Shaw has requested a lower group CPE at 29% and a PNI CPE of 5%. The WGC recommends a common CPE of 30% for all corporate groups and a common PNI CPE of 10% for all corporate groups except Rogers.

44. While the Commission clearly stated that specialty services would maintain distinct conditions of licence under the new group licensing policy, in its application Shaw has called these distinct conditions of licence "licence-specific overlays that effectively serve as obstacles to the implementation of the over-riding new policy". We support the Commission's initial position that in the interest of genre diversity each specialty service is to maintain its distinct conditions and object to Shaw's request to remove commitments to independent production and Canadian exhibition or expenditure requirements. For example, Shaw has applied to have the independent production commitments in

Showcase's condition of licence removed. As mentioned above, these conditions of licence were arrived at to ensure a commitment to Canadian programming unique to each service. Group licensing was not intended to remove these unique requirements nor are they new commitments as characterized by Shaw.

45. Shaw has applied to remove the cap on sports on TVTropolis. For services such as TVTropolis, which have a very broad nature of service (i.e. 'programs of interest to adults over 50 years of age') it is essential for genre diversity to not allow the service to creep into other services. Sports is a genre very well covered by TSN, Sportsnet and many other smaller sports channels. Shaw also asks to amend the limitation that drama be at least 10 years old so that it is capped at 50% of drama. This amendment would also allow TVTropolis, which is branded on its website as 'the home of back-to-back, recent iconic tv series' to morph into another yet another channel filled with reruns of recent U.S. dramas. The WGC objects to both of these proposed amendments.

46. As the Commission may recall, the WGC has a long history of trying to get History Television to comply with its nature of service definition. It objected to the characterization of "CSI: New York" as current affairs programming and after over a year and a half of correspondence the Commission agreed and advised History Television that they were not in compliance and "CSI: New York" was to be removed from the schedule. History Television replaced that crime procedural with another - "NCIS". Because of our frustration with History Television and the repeated attempts to get it to live up to its narrative description of its nature of service, the WGC pays careful attention now to the History Television schedule. While there do not appear to be any crime procedurals on History Television at the moment, we are concerned that programs like "Rodeo" (a reality show following the lives of rodeo cowboys), "Outlaw Bikers" (a reality show following the lives of members of biker gangs) and "Ice Road Truckers" (a reality show following the lives of truckers who travel over ice roads) demonstrates the History Television is still not focused on its mandate of history and current affairs programming. It has merely switched from crime procedurals to reality programming in the subgenre of 'following the lives of people we'll never meet'. The WGC does not have the resources to file complaints against History Television and every other service which is expanding its programming beyond its narrative description. We encourage the Commission to continue to enforce narrative conditions of licence.

47. As with CTV's Bravo!, Shaw's service Showcase does not have a narrative description. It is to offer fiction programming that is "the best of independently-produced movies, drama, comedy and mini-series from Canada and around the world."[9] Showcase has a limitation on U.S. programming (90% produced outside the U.S.) to reinforce the intention that Showcase was to be an alternative to

[9] Decision CRTC 1994-280

mainstream drama. Shaw is proposing changes to Showcase's conditions of licence including the removal of programming expenditure, exhibition and independent production commitments, which we refer to above and continue to object to and the reduction of the U.S. programming cap to 50%. In order to improve the Commission's ability to enforce genre diversity and to maintain the intention that Showcase provide audiences with primarily the best of non-American drama programming, the WGC strongly suggests that the Commission introduce an appropriate narrative description. As well, while the WGC does not have the resources to provide a detailed analysis of Showcase's program schedule, we do question whether Showcase is abiding by its limitation on U.S. programming given that its schedule is full of U.S. shows such as "Weeds", "CSI: New York", "NCIS", "Rescue Me", "Bones" and "House".

48. Shaw has also taken the position that no new exhibition obligations should be placed on Category B services with more than 1 million subscribers. As mentioned above, the WGC does think that it is appropriate for these Category B services to have Canadian programming exhibition and expenditure requirements as well as contribute to PNI CPE and overall CPE. We leave it to the Commission to establish with Shaw the appropriate exhibition and expenditure requirements for each service based on the nature of that service. However, as a principle, successful Category B services should help ensure access to Canadian programming through exhibition requirements.

<u>Rogers Broadcasting</u>

49. Rogers has requested an overall CPE of 25% and a PNI CPE of 2.5% in the first year, increasing to 3% by the last year of the term. For the reasons mentioned above, the WGC supports a common CPE of 30% for all corporate groups, including Rogers. However, due to the distinct asset mix of Rogers with few drama channels, we do support a lower PNI CPE for Rogers of 5%. We understand their arguments that they should be treated differently however do feel that they should be making more of a commitment to PNI than they are currently doing.

50. Rogers applied January 27, 2009 and again (after being denied) on November 13, 2009 to have the licence of Outdoor Life Network (OLN) amended on several of the grounds requested again in this licence renewal application. As we did on the earlier occasions, the WGC objects to these amendments on the basis that it would be difficult for OLN to maintain its narrative description of its nature of service, namely,

> "The programs will deal exclusively with outdoor recreation, conservation, wilderness and adventure. The schedule will revolve around eight key themes such as outdoor exploration and adventure, marine recreation, winter recreation, conservation, nature enthusiasts, anglers, outdoor cooking and hunting."

Rogers is attempting to address this concern this time by also requesting that the word 'exclusively' be deleted from the nature of service description. Rogers appears to not understand the genre diversity policy of the Commission. Narrative descriptions were put in place so that services were distinct and could be competitive. Removing the word ‘exclusively’ and allowing the requested amendment to remove the requirement that any drama must be Canadian would together allow OLN to drift into other services, particularly if they (e.g. Showcase, Bravo!) are allowed to air more reruns of old U.S. dramas. Rogers argues that they cannot maintain the same level of PNI CPE as the other corporate groups because specialty services such as OLN carry little PNI. If OLN is to be allowed to carry more drama it should be PNI rather than old U.S. programming such as “Lost”.

<u>Corus Entertainment Inc.</u>

51. As mentioned above, Corus has a distinct asset mix which affects the extent to which group licensing principles can apply to it. A corporate CPE of 30% would seem to be appropriate as well as a PNI CPE of 10% however they have requested other amendments citing the group licensing policy which are not appropriate given the services within the Corus group.

52. Corus has asked for the individual CPEs for each of their services to be decreased across the board to 30% for Category A services and 15% for Category B services. Corus argues that genre protection has eroded and as a result Corus needs more flexibility in order to compete because – to paraphrase – everyone can see everything on every channel so attracting audiences is harder. A curious argument. Genre protection is still a policy of the Commission not just so that new entrants can become stronger but also to ensure diversity in the broadcasting system because this is what consumers are paying for and what the *Broadcasting Act* requires. As mentioned above, the group licensing policy was based on individual services maintaining their distinct CPEs to support diversity.

53. The Commission’s existing policy of increasing CPEs for specialty services as their PBITs increased does not seem to apply in the context of group licensing since it negatively impacts the conventional CPE. However, in the case of Corus they have only 3 local conventional stations which are CBC affiliates. As affiliates, Corus has no control over their programming schedule and therefore cannot support programming obligations of the group. Corus is not proposing a conventional CPE for those 3 stations. As such, it appears to us that the Commission’s policy of increasing specialty CPEs based on increased PBITs should apply here. We recommend that the Commission review Corus’ data with the goal of assessing the impact of the removal of the CMF licence-fee top up and the application of the PBIT policy in order to arrive at any necessary increases in individual CPEs.

54. To pool the Category A’s as Corus suggests would not allow variations in Canadian programming support which are unique to specific services. This averaging out may have the greatest impact on the youth and children’s services owned by Corus. Treehouse has a CPE of 36% and YTV has a CPE of 40%.

Once the CMF top up is deducted it is not clear what the CPE should be[10] given that both services have increased in profitability, however the WGC urges the Commission to ensure that Treehouse and YTV's commitment to Canadian children's programming does not decrease. Conventional broadcasters argue that Canadian children do not need programming on conventional services because Canadian families have Treehouse and YTV. It seems to us that with a flat CPE and 100% flexibility, Corus has the ability to reduce its expenditure on Canadian children's programming. In fact, Corus has applied for a number of amendments to Treehouse and YTV's conditions of licence which together undermine Canadian children's abilities to watch their own programming. The WGC believes that Commission has a duty to ensure that Canadian children have the choice of watching Canadian programming during their most impressionable years.

55. Treehouse does not have a narrative description of its nature of service. Its programming requirements limit the target audience of its programming to children up to 6 years of age between 6am and 9pm. This should be written into a narrative description in order to assist the Commission in enforcing conditions of licence. Corus has applied to have the restriction on airing YTV programming deleted. This would allow Corus to amortize costs of programming over both services. Given that they are targeting two distinct age groups (preschool for Treehouse and school age for YTV), this is an inappropriate place to save costs. The restriction should be maintained.

56. YTV has requested a number of amendments to its condition of licence which have been denied on previous occasions to ensure that there is no direct competition with Family Channel and encourage Canadian series. These limitations on programming have helped YTV become as successful within the youth market as it has and should be maintained. Specifically, the requirement that 100% of evening drama be targeted to children, youth or families, the limitations on the categories that family programming can be drawn from, the 10% cap on feature films and the 5% cap on music videos are all requirements that should be maintained to prevent genre creep.

57. W Network does not have an express nature of service definition as it was always intended to be a general interest service for women. In order to differentiate it however, it does have a limitation on U.S. programming. A request to amend this in 2001 was denied and should be again. W needs to have a more distinct nature of service to be competitive. As with Treehouse and YTV, Corus has also applied to have the services CPE reduced yet it appears to be more profitable.

[10] Corus has cited 24.5% as the post-CMF deduction CPE however given problems with the data outlined in the Joint Report we are not sure this is an accurate CPE.

58. As with the other broadcasters, Corus is applying to have Canadian exhibition requirements on its Category A services reduced from various levels depending on the service to a flat 50% during the year and 50% during prime time. Corus' logic is that 'the old rules might not be working' yet they offer no evidence upon which to back up that statement. As mentioned above, the flexibility to assign CPE from one service needs to be balanced by distinct and clear exhibition requirements. A group CPE with 100% flexibility between services cannot be allowed to reduce Canadian programming on individual services, particularly W, Treehouse and YTV. All other licence-specific conditions, such as obligations to independent production, should be maintained in order to support diversity of voices. From the WGC's perspective, clear requirements contained in conditions of licence to maximize the use of independent production <u>are</u> working.

59. Corus has also taken the position that no new exhibition obligations should be placed on Category B services with more than 1 million subscribers. As mentioned above, the WGC does think that it is appropriate for these Category B services to have Canadian programming exhibition and expenditure requirements as well as contribute to PNI CPE and overall CPE. We leave it to the Commission to establish with Corus the appropriate exhibition and expenditure requirements for each service based on the nature of that service. However, as a principle, successful Category B services should help ensure access to Canadian programming through exhibition requirements.

<u>Conclusion</u>

60. This was a difficult submission to write. There was an overwhelming amount of data and correspondence to review within a very brief period of time. Even though the Creative Community pooled its resources to go through the data we soon learned that there were gaps and inconsistencies in the data, as outlined above and in the Joint Report, which made our analysis particularly difficult. Given these constraints, this submission highlights our greatest concerns and is not as exhaustive as we would have liked. We will continue to work on our analysis prior to the Public Hearing and hope that we have additional data to review and proposals to present at the Public Hearing which will be of assistance to the Commission.

61. The WGC believes that given the private broadcasters proven goal to minimize their regulatory obligations and maximize their revenues it is incumbent upon stakeholders such as the WGC and our fellow colleagues in the Creative Community, to provide balance in the system. We provide another voice that attempts to remind broadcasters of their role in the Canadian broadcasting system and their obligations under the *Broadcasting Act*. This is why we spend our limited resources advocating for Canadian programming and particularly Canadian drama.

62. One final note on the length of the term of group licensing. A number of the broadcasters have expressed concern about the rapid pace of change and

argued that as the next term will not expire until August 31, 2016, broadcasters need more flexibility in order to adapt to unanticipated changes. The WGC would rather that the Commission provide a regulatory framework with clear obligations that support Canadian programming and PNI and a shorter licence term than approve a longer licence term with the room for broadcasters to avoid or minimize their obligations. If a 5 year licence term really is a problem for broadcasters, then perhaps the Commission should consider a three year term.

63. We thank you for this opportunity to provide you with our comments.

Yours very truly,

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Schedule 1

Joint Report of ACTRA, DGC and WGC

(see attached)

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