ACTRA

May 10, 2018

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

Dear Mr. Doucet,

Broadcasting Notice of Consultation – CRTC 2017-429-1
Reconsideration of the decisions related to the licence renewals for the television services of large English-language private ownership groups
Final Response to Broadcasters' Replies

Introduction and Summary of ACTRA Recommendations

1. This is the response of ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) to the replies of Corus Entertainment Inc., Bell Media Group and Rogers Media Inc., in the matter of Broadcasting Notice of Consultation CRTC 2017-429-1, the *Reconsideration of the decisions related to the licence renewals for the television services of the large English-language private ownership groups*.

2. ACTRA brings to this process the perspective of over 25,000 professional performers working in the English-language recorded media sector in Canada. For 75 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, sound recording, radio and digital media.

3. ACTRA has carefully reviewed the reply of each applicant and finds nothing that causes us to change our positions. Thus, ACTRA reaffirms all recommendations we filed on January 23, 2018. Key among these are that the CRTC:
   - Continues to require that each of Corus Entertainment Inc., Bell Media Group and Rogers Media Inc. spend no less than 30 per cent of revenues on Canadian Programming Expenditures (CPE). ACTRA notes Rogers Media Inc. agrees the CPE should be standardized for each group and that the 30 per cent level is appropriate;

Alliance of Canadian Cinema, Television and Radio Artists

ACTRA National Office
625 Church Street · Suite 300 · Toronto ON M4Y 2G1
Toll free 1-800-387-3516 · Tel (416) 489-1311
Fax (416) 489-8076 · E-mail national@actra.ca · www.actra.ca

Affiliated with the Canadian Labour Congress (CLC)
and the International Federation of Actors (FIA)
Branch Offices: Vancouver · Calgary · Regina · Winnipeg
Toronto · Ottawa · Montreal · Halifax · St. John's

- Requires Corus Entertainment Inc. to allocate no less than 10 per cent of its revenues to Programs of National Interest (PNI);
- Requires Bell Media Group to allocate no less than 10 per cent of its revenues to PNI;
- Requires Rogers Media Inc. to allocate no less than six per cent of its revenues to PNI;
- Retains the existing definition of programming that qualifies as PNI; and
- Contingent on the implementation of the 10/6 per cent PNI requirement, permits each group to produce in-house, or to acquire from affiliated productions companies, up to 50 per cent of the total spending on PNI.

The Order in Council DOES NOT permit the CRTC to reduce CPE

4. The Order in Council does not provide scope in this reconsideration process for the CRTC to decrease the Canadian Programming Expenditure requirements from 30 per cent to 28 per cent as requested by Corus and Bell.

5. Under the *Broadcasting Act,* the Commission is established as an arm's length agency. The Commission is to administer the existing *Act* and implement policies established by law and regulation. The Governor in Council retains significant control through the powers it has not only to appoint Commissioners, but also to direct the work of the Commission. It has the power to set aside a specific Commission decision, or to send it back for reconsideration, as well as the power to issue a general policy direction under Part II, Section 7.

6. The Order in Council must then be viewed as being the specific direction of the Governor in Council. It not only refers the decision back to the Commission, but explicitly states where the original CRTC decisions were incorrect. For this process, these are the key extracts:

   "… the decisions derogate from the attainment of the objectives of the broadcasting policy for Canada set out in subsection 3(1) of the Broadcasting Act, and in particular paragraph 3(1)(s) of that Act…." [The CRTC should] "…consider how it can be ensured that significant contributions are made to the creation and presentation of programs of national interest, music programming, short films and short-form documentaries…"

7. Notwithstanding the submissions of Corus and Bell, Section 3(1)(s) of the *Act* is not about ensuring their financial health. It is about ensuring that private broadcasters "contribute significantly to the creation and presentation of Canadian programming" … "consistent with" their financial and other resources. ACTRA continues to insist a 30 per cent CPE requirement is fair and reasonable. By its very nature, a percentage requirement responds to the financial capacity of each broadcaster and adjusts automatically as this changes over time. ACTRA congratulates Rogers for stepping forward to acknowledge a 30 per cent CPE is appropriate.

8. Any decision that would reduce the total amount broadcasters are required to spend on Canadian content would be directly contrary to the clear intention and direction of the Governor in Council. As a more practical matter, the Commission could expect that, were it to make such a decision, a new petition to the Governor in Council would be filed.

Programs of National Interest

9. The Order in Council is clear this process is about ensuring each broadcaster is “contributing significantly to the creation and presentation” of **certain kinds** of Canadian content, i.e. “programs of national interest, music programming, short films and short-form documentaries.” At the centre of this, of course, are the Programs of National Interest – drama and scripted comedy.

10. ACTRA contends that the essential argument put forward by broadcasters to justify a reduction in the CPE requirement and setting of a PNI level below their own historical spending is a logical non-sequitur. The broadcasters argue they are challenged by new competitors who are taking market share and advertising revenues. To compete, they need more flexibility, including lower requirements for spending on drama because it is expensive to produce and “unprofitable.” What makes this argument fail is that their competitors are surging ahead precisely because they are acquiring and programming high-quality drama programs, series and films, and not because they are providing viewers with information or lifestyle programs. Further, their competitors are investing billions of dollars in drama productions, including some that qualify as Canadian content, because they believe this to be a sound investment that will bring profitability.

11. ACTRA believes the best response for Canadian broadcasters confronted with OTT services is to embrace their own competitive advantage, which is their access to the treasure trove of Canadian stories and storytellers, and the many supportive public polices and financial incentives.

PNI should not cover music, short-form documentaries and special recognition programs

12. ACTRA submits the definition of PNI should not change, and new incentives for other program categories should not be implemented.

13. In Broadcasting Regulatory Policy CRTC 2010-167, the Commission eliminated an exhibition requirement for “priority programming” and replaced it with an expenditure requirement that applies “to categories of programs that the Commission considers to be of national interest and that, in its view, require continued regulatory support.” The Commission specifically noted “drama is … the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.”

14. Music, short-form documentaries and special recognition programs generally are not “expensive and difficult to produce.” Further, they are not genres of programming “that Canadians choose to watch more than others.” There is no basis to include them in PNI.

15. While we would like to see more music and variety programs on our television screens, ACTRA opposes any consideration of these programs as PNI, and any incentives or credits

related to CPE or PNI. It is important to recall this type of programming costs on average only 28.3 per cent of what it costs to produce a fiction program. According to the CRTC's Communications Monitoring Report 2017, only 1.2 per cent of Canadian viewing time was spent watching these programs. Of this very small time, 33.6 per cent was spent watching Canadian programs,[1] which is a far higher percentage than that of Canadian drama and comedy (Fig. 4.2.14).

16. Finally, in response to Bell Media, ACTRA has noted it represents many of the performers who appear in variety, music, short-form documentaries and special recognition programs. Our position on this issue is not motivated by a narrow self-interest as alleged by Bell Media.

Financial Issues and PNI

17. ACTRA continues to believe the CRTC can appropriately consider in this process the overall financial health of vertically integrated companies that operate in broadcasting, program production and distribution, entertainment, telecommunications and the Internet. When seeking regulatory approval for acquisitions, these companies are quick to point out how "synergies" will be achieved. Similarly, costs can then be appropriately shared across the divisions. We also reiterate these companies have grown and developed under the protection of supportive CRTC policies and regulations, and other public policies and funding programs.

18. That said, ACTRA submits its recommendation to increase the PNI for each broadcaster is fair and appropriate, in any case, and within the financial capacity of each group based on their own projected revenues.

19. To achieve the 10 per cent PNI level over the three years beginning in 2018-19, Corus must find $137.0 million from projected total revenues of $3,407.7 million.[2] To meet a 30 per cent CPE requirement, it would need to find an additional $58.0 million over what it projects to spend, and this should be directed to PNI. Thus, the top-up required to meet the 10 per cent PNI is $79.0 million, or 2.32 per cent of projected revenues in that period.

20. To achieve the 10 per cent PNI level over the three years beginning in 2018-19, Bell must find $148.7 million from projected revenues of $3,834.4 million.[3] To meet a 30 per cent CPE requirement, it would need to find an additional $53.4 million over what it projects to spend, and this should be directed to PNI. Thus, the top-up amount required to meet the new PNI target is $95.3 million, which is 2.55 per cent of projected revenues in that period.

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[1] *Communications Monitoring Report 2017*, CRTC;

[2] *Response to Broadcasting Notice of Consultation – CRTC 2017-429*, ACTRA National, January 23, 2018;

[3] Ibid;

21. To achieve the six per cent PNI level over the three years beginning in 2018-19, Rogers must find $6.7 million, or 0.87 per cent of projected revenues of $771.4 million.[4]

Conclusion

22. Given the continuing challenges Canadians face in finding high-quality television drama and comedy that reflects their lives, fears, dreams and aspirations, ACTRA submits this CRTC process may be our last opportunity to ensure the regulated broadcasting sector makes a significant contribution to such programming. The CPE requirement for each broadcasting group should be retained at 30 per cent of revenues. The definition of PNI should not be expanded. And the Commission should require Corus Entertainment Inc. and Bell Media Group each to allocate no less than 10 per cent of their revenues to PNI, and Rogers Media Inc. to allocate no less than six per cent of its revenues to PNI.

Thank you,

Stephen Waddell
National Executive Director
ACTRA

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[4] Ibid.