



16 October 2020

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

Broadcasting Notice of Consultation CRTC 2020-336

Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic

Submitted electronically: [CRTC Intervention Comment Form](#)

Dear Mr. Doucet,

Introduction

1. This is the submission of ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) in response to the request of the Canadian Association of Broadcasters (CAB) for regulatory relief for private broadcasters in light of the financial challenges resulting from the COVID-19 pandemic.
2. ACTRA brings to this process the perspective of over 27,000 professional performers working in the English-language recorded media sector in Canada. For more than 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, video games, sound recording, radio and digital media.
3. ACTRA acknowledges these are challenging times globally as we struggle to deal with a new contagious and deadly virus. Like everyone, ACTRA members have been seriously and negatively affected by the pandemic. In addition to the terrible physical toll suffered by too many Canadians, some of us and our families, friends, colleagues and neighbours have been laid-off, or pressed into service as care providers or home-school teachers. Our multi-billion-dollar production industry ground to a halt in mid-March and only began to slowly reopen five months later.

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4. Thus, ACTRA is not indifferent to the situation of Canada's private broadcasters who are dealing with unexpected revenue losses at the same time as they continue to respond to the digital disruption reshaping Canadian broadcasting.
5. ACTRA is grateful for the federal government's assistance to individuals and businesses to help them survive the crisis. Our members had access to the Canada Emergency Response Benefit (CERB) and hopefully to the Canada Recovery Benefit (CRB). Broadcasters were relieved of their obligation to pay Part 1 licence fees and are eligible for support from the Canada Emergency Wage Subsidy (CEWS), which will continue into 2021. Additionally, the \$500 million Emergency Support Fund announced by Canadian Heritage in May is providing some relief to the media sector, and the most recently announced program to provide COVID-19 insurance for producers is essential to our ability to restart production in Canada.
6. ACTRA also notes, at the time of writing, Canada has entered the second wave of the pandemic. While the precedent of the 1918-1919 flu pandemic, where the second wave was substantially worse than the first, is worrisome, we fervently hope the vigilance of Canadians, combined with modern science and excellent healthcare, will prevent this in 2020-21. But the final catastrophic impact of the COVID-19 pandemic, both in untimely deaths and economic disruption, is far from certain.
7. In its July 13, 2020, letter, CAB noted advertising revenues of television broadcasters declined by 15 per cent in March, 46 per cent in April and 50 per cent in June, and broadcasters expected declines of 50 per cent to continue into the fall. The letter noted advertising bookings for September-December 2020 are "substantially off Quarter 1 of 2019-20." In addition, CAB argues the production shutdown, continued disruption from the digital shift, and overall economic uncertainty are having a huge negative impact on broadcasters' operations.
8. CAB proposes the Commission respond to the crisis by taking several steps to support private broadcasters. ACTRA will focus on two as they relate to television broadcasters:
 - a) That the Commission deem broadcasting licensees, absent any bad faith on their part, to have met their conditions of licence and the regulations relating to spending for the 2019-2020 broadcast year. Licensees would be considered in compliance regardless of actual levels of expenditures made and would not have to make up any shortfalls in subsequent broadcast years. Requirements for 2020-21 will be based on the significantly lower revenues of the previous year. "Necessary flexibility would also be formally confirmed for exhibition and other regulatory requirements."
 - b) That the Commission "refrain from auditing broadcasters' locally reflective news and local programming requirements for the latter half of the 2019-2020 broadcast

year,” or view them through a “should resources permit” lens, ensuring there would be no sanctions if broadcasters failed to meet specific licence conditions.

Analysis

9. We accept broadcasters’ advertising revenues have declined significantly and there remains considerable uncertainty in the media sector, even as we are well into the 2020-21 broadcast year.
10. On the other side, broadcasters did have some opportunities this year, and these are likely to continue into whatever our new normal will become. As Canada was locked down in the early months of the pandemic, television viewing time increased as audiences focused on entertainment programs as well as news and information. This will happen again if further mobility restrictions are imposed by public authorities. Production is slowly ramping up and this will accelerate with the recent federal government COVID-19 insurance support measure. Thus, we are beginning to see new programs, both in established successful series and new ones. If cinemas remain closed, we may see more films available on traditional television. Live sporting events, an important vehicle for advertisers and a much-needed diversion for many, have returned to our screens. The cardboard spectators in arenas and stadiums highlight these events are, for the foreseeable future, staged exclusively for a television audience.
11. ACTRA notes there are major differences between Canada’s large and small broadcasters, and these need to be considered in this process.
12. There are close to 30 television broadcasters in English Canada, including affiliates of networks, that are owned independently or by smaller groups such as Jim Pattison, Channel Zero, Yes TV and Zoomer. Some specialty services are owned independently or by groups such as Blue Ant Media. These broadcasters have appropriate licence conditions respecting the exhibition of local, regional and genre-specific content. Importantly in this pandemic era, this includes obligations for locally reflective news and information programming. In 2018, local private television broadcasters spent 62 per cent of their Canadian Programming Expenditures (CPE) on news and information programming.¹
13. It is likely these independent broadcasters, already challenged by unregulated online services, are less able to weather the storm than are the large, vertically integrated television groups. The closure of local businesses, which continues in parts of the country today, is undoubtedly having a negative effect on the advertising of local goods and services, the core revenue stream of locally focused broadcasters. ACTRA notes the British Columbia Association of Broadcasters highlights these local challenges in its recent request for support from the B.C. government.

¹ CRTC financial summaries

14. Bell Media, Rogers Media and Corus Entertainment are large, vertically integrated companies with a range of assets, including television networks, specialty services and other related media companies. Bell and Rogers have a significant presence in the telecommunications business and are among Canada's leading Internet Service Providers. Clearly, the television and radio assets of these companies are affected by declining advertising revenues. But, the telecommunications business remains strong, particularly as government-imposed restrictions on movement and the ongoing closure of workplaces have caused us to spend more time at home, and in greater need of our technologies to keep us connected to work, school, family and friends.
15. The situation for some larger advertisers, particularly those providing essential goods and services and those with existing home delivery capabilities, is stronger than it is for local advertisers, and we are already seeing these large advertisers responding to the new normal in their recent media advertising campaigns.
16. Many broadcasters, including Bell, Rogers and Corus, have CPE requirements and requirements to spend on Programs of National Interest (PNI). While ACTRA has argued for the continuation of exhibition requirements and larger financial commitments to Canadian content, for the past decade CPE and PNI requirements have been the cornerstone of our broadcasting system. They establish how broadcasters are to fulfill their obligations under the Broadcasting Act to ensure the system provides high-quality Canadian news, information and entertainment programming.
17. An important element of the CPE and PNI spending requirements is they are calculated as a percentage of broadcasting revenues earned in the previous year. They are thus self-regulating over time – if revenues decline, spending on Canadian content does likewise – if revenues increase, more money must be spent on Canadian programs and PNI. ACTRA is also mindful that CPE and PNI are minimum spending requirements, not maximums, although most broadcasters seem to consider them to be a ceiling.
18. ACTRA categorically rejects the statement in CAB's application that: "There is no 'making up' for COVID-19 related losses. Broadcasters are not going to be able to make up for lost revenues." We appreciate lost advertising revenues cannot be recaptured, but that is a totally different issue from how expenditure-based licence conditions can and should be addressed in light of both reduced revenues and the self-regulating nature of CPE and PNI.
19. The information available to ACTRA and other intervenors in this process is inadequate. In an issue as important as waiving or significantly varying fundamental obligations of broadcasters mid-stream, the Commission should require the timely public release of all relevant information. In this consultation process, it is essential to have information about:

- *Current advertising sales.* By now, broadcasters know what is happening in the first half of the 2020-21 broadcast year and will have a good sense of prospects for the second half.
- *Broadcasters actual spending in the 2019-20 broadcast year on CPE, PNI and tangible benefits.* Given the pandemic was declared just after the six-month point of that broadcast year, some or all CPE and PNI presumably would have been committed or spent by mid-March when the lockdown began.

ACTRA Response to CAB Proposals

20. **ACTRA opposes CAB’s requests related to locally reflective news and local programming requirements as a blanket regulation.** ACTRA urges the Commission to consider requests and to provide the necessary relief on a case-by-case basis. Further, as the CRTC suggests, there should be no exceptions in areas related to access for persons with disabilities and the public alert system. Flexibilities related to local and regional news programs must be balanced against the fundamental need for Canadians to have access to vital local news and information.
21. **ACTRA also suggests the necessary flexibility for failure to meet other exhibition or any other condition of licence (except CPE and PNI spending covered below), be provided on a case-by-case basis.** Each broadcaster should outline the circumstances that resulted in its failure.
22. We expect, after considering a few specific cases, the CRTC could adopt a universal policy based on the amount of revenue decline and the nature of the licence condition. All information related to any request for exemption and the relief provided should be public.
23. Given the self-regulating nature of CPE and PNI requirements, **ACTRA opposes CAB’s request that all broadcasters be deemed to have complied with their CPE, PNI and tangible benefits requirements in 2019-20.**
24. ACTRA notes “deemed compliance” would create considerable uncertainty. How would broadcasters account for Canadian spending they did make in 2019-20? Since expenses on independent production can be amortized over several years, will they seek to allocate more of this spending to the 2020-21 broadcaster year and beyond, rather than to a year in which they are deemed to have complied? Such a system could also disadvantage broadcasters who made significant expenditures in the first half of the 2019-20 broadcast year while unduly benefitting others who may have made only modest or few such expenditures.
25. The decline in broadcaster revenues in the second half of the 2019-20 broadcast year automatically significantly decreases the resources available for future Canadian content production, regardless of the outcome of this process. This will have a cascading

negative effect on the Canadian independent production industry that has been gutted by the pandemic.

26. Finally, given we are now well into the 2020-21 broadcast year and the second wave of the pandemic, ACTRA cannot see how a retroactive “deemed compliance” provision will relieve the uncertainty that will remain until a vaccine is found and rolled out globally. A one-time “deemed compliance” provision is likely to be an inadequate response that could well result in a similar CRTC filing by broadcasters in June 2021.
27. As an alternative to “deemed compliance,” **ACTRA proposes the fairest and simplest solution with respect to spending requirements is to acknowledge the ongoing challenge, and to permit each private broadcaster to fulfill its CPE, PNI and tangible benefits obligations over the entire term of its existing licence.** This would eliminate any limit on the amount of underspending permitted in any given year as well as the requirement to make up any underspending in the subsequent year.
28. ACTRA is further prepared to consider a proposal to lengthen each licence term by one year if this is essential to the ability of broadcasters to adapt to our new normal. If such an extension is to be considered, the CPE and PNI requirements (i.e., the percentage of the previous year’s revenues) in the additional year must be the same as what each broadcaster is required to spend in the final year of the existing licence term.
29. **Finally, ACTRA proposes the CRTC require, where a broadcaster is unable to fulfill any licence condition and seeks an exemption or waiver of such requirement, all relevant financial information must be made public on an ongoing and timely basis.** This is essential given the fundamental importance of the broadcasting system and the need for the public to have confidence that broadcasters are doing their best to respond to their challenging circumstances while respecting the needs of Canadians.
30. Thank you for considering our views. ACTRA appreciates the opportunity to share these comments and we look forward to answering any questions the Commission may have about our submission.

Respectfully,



Marie Kelly
National Executive Director, ACTRA

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