



Ottawa

February 9, 2011

Mr. Robert A. Morin  
Secretary General  
CRTC  
Ottawa, ON  
K1A 0N2

By email

Dear Mr. Morin,

**Re: Notice of Consultation CRTC 2010-952**

**Group-based licence renewals for English-language television groups**

**Introduction**

- 1 The Canadian Conference of the Arts (CCA) is the oldest and largest umbrella organization representing the full spectrum of the arts, culture and heritage sector in Canada, English and French. Our mission is to be the national forum for the arts and cultural community in Canada; to provide research, analysis and consultations on public policies affecting the arts, and the Canadian cultural institutions and industries; to foster informed public debate on policy issues; and to advance the cultural life of Canadians.
- 2 Because broadcasting is the dominant cultural medium and the *Broadcasting Act (1991)* contains the most complete expression of cultural policy ever adopted by Parliament, the CCA has participated actively in CRTC processes for decades, including on several occasions in the past three years as the Commission's agenda accelerated.
- 3 CCA is pleased to have this opportunity to participate in these hearings but we must start with the now usual complaint that it is extremely difficult for public interest groups like ours to do so without having access to relevant data which is only known by the Commission and the applicants. In our intervention in CRTC 2009-411, we urged the Commission to release detailed financial information about each broadcasting group in the context of the licence renewal process which was then scheduled to take place in 2010.

- 4 Unfortunately, in the current situation, there is incomplete or inconsistent data, some has been filed late and broadcasters are proposing to use estimates for 2011 rather than the historical figures which have been reported to the Commission. Thus, CCA is not in a position to offer the Commission detailed comments about the specifics of the CPE and PNI calculations in each application. Instead, we will concentrate our intervention on broader points of principle and overall objectives.
- 5 As if to add insult to injury, the Commission first issued PN CRTC 2010-952 on December 22, 2010 and set an initial deadline of January 28, later extended to February 9, 2011 after receiving protests. This tight timeframe seriously disadvantages public interest interveners. That said, we we will give it our best shot!
- 6 In this brief, the CCA will concentrate on the following issues:
  - the need for appropriate expenditure requirements to ensure there is a strong Canadian presence in the system;
  - what percentages of total revenue should be set for Canadian Programming Expenditure (CPE);
  - what percentage of total revenue should be set for Programs of National Interest (PNI);
  - the basis on which to establish total revenues and historical expenditure levels.
- 7 CCA wishes to appear at the public hearing scheduled to commence on April 4, 2011 to elaborate on our views.

### **The need for proper expenditure requirements**

- 8 For years now, the CCA has been supporting the view that the CRTC had to intervene to redress the significant imbalance of spending on Canadian vs. foreign programming by over-the-air (OTA) television broadcasters, most specially in the English market. We therefore rejoiced when the Commission announced new group-based Canadian programming expenditure (CPE) requirements and additional requirements related to programs of national interest (PNI), which the Commission has defined as scripted drama, documentaries and Canadian awards shows. With the exception of the reduction in Canadian content level, we were generally pleased with the decision of the Commission in Broadcasting Regulatory Policy 2010-167 (the group-based policy).
- 9 In previous appearances before the Commission, the CCA has objected to the idea that Canadian content requirements be reduced from their historical level of 60% over the broadcast day. We were therefore very disappointed when the decision was made to reduce CanCon requirements to 55%.
- 10 But the current process is an opportunity to correct the imbalance in the programming available to Canadian audiences by implementing general CPE requirements on OTA broadcasters and specific expenditure requirements for PNI.

- 11 Before making comments on the appropriate CPE and PNI levels, we would like to comment on the basis on which such calculations will be made. As part of their applications in this proceeding, all four of the large broadcast ownership groups have proposed that group-based CPE and PNI requirements in year one of the new licence term should be calculated based on an average of the revenues in each of the three previous broadcasting years.
- 12 That period of reference seems totally inappropriate to us as it encompasses a period of unusually low revenue by broadcasters because of the 2009 and 2010 economic downturn. Those years were abnormal both in terms of revenue and in terms of the percentage of revenue spent on Canadian programs, which went down even more.
- 13 We also object to a policy that would permit current year projections for 2011 to be used in establishing historical levels, such projections being open to the kind of manipulation that is unlikely to be in the public interest.
- 14 Consequently, we recommend that the Commission rely on figures for the years 2006, 2007 and 2008 in order to establish the proper CPE and PNI requirements.

#### **Maintaining Canadian Content requirements for specialty services**

- 15 In consideration of the requirements of the *Broadcasting Act* (art. 3 (1) f), 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 of programming”, the CCA is strongly opposed to any suggestion that CanCon requirements be lowered for specialty services, particularly now that ownership of OTA stations and specialty services has been consolidated.
- 16 A quick look at the history of Category A specialty services will show that applicants competed with each other to guarantee higher levels of Canadian content than their competitors, to commit to other conditions of licence that would benefit the broadcasting system, and to commit to higher CPEs in order to obtain a licence. This has at least ensured that important sums of money were invested in the creation of Canadian programs while OTA broadcasters were taking advantage of the Commission’s 1999 TV Policy to spend a disproportionate portion of their revenue on purchasing foreign programs to the detriment of Canadian programming, particularly in the area of underrepresented categories.
- 17 Now that specialty services represent the most lucrative part of the business, their new owners are seeking reductions in their Canadian content requirements. This should be rejected. Maybe the Commission should consider putting such licences up for bids again, to revitalize interests in Canadian programming?
- 18 We are particularly concerned by Shaw’s application that the self-imposed condition on Showcase to keep under 5% of their schedule content acquired from any given foreign country be lifted and Corus’ analogous request to eliminate similar restrictions on W Network. These requests are egregious and must be denied, the

CCA therefore urges the Commission to retain all current conditions of licences for specialty services.

### **Establishing the proper levels for CPE and PNI**

- 19 CCA's recommendation to the Commission is that CPE be established as a minimum at 30% of total revenue for each group, with even a possibility of scaling upwards over the course of the five-year licensing period. This requirement will barely re-establish a reasonable equilibrium between what Anglophone broadcasters spend on acquiring foreign programming and what they spend on Canadian programs. We are happy to note that it appears that such a CPE for CTVgm would result in it achieving a roughly 50:50 split between Canadian and foreign programming expenses. This should be the minimum level achieved by each group by the end of the licence term.
- 20 The most serious Canadian content programming deficiency of course is English-language Canadian drama and scripted comedy. Drama is the most watched form of programming overall, and the most culturally significant. The Commission has acknowledged this deficiency more than once and has in the past attempted to correct it through incentives. This is the perfect opportunity to correct the situation by requiring that each group invest more money in the production of programs of national interest.
- 21 The CCA considers that the proposed level of 5% for PNI is not sufficient and recommends that the Commission establish the following levels for each group:
  - Shaw: 10%
  - Corus: 10%
  - Rogers: 5% initially, growing to 10% over the five-year licence
  - CTVgm: 8% initially, growing to 10% over the five-year licence.

### **Relying on the independent production sector**

- 22 In order to ensure there is a diversity of programming, CCA believes it is essential to have a strong independent production community in Canada. The policy pursued by governments over the past twenty years has provided us with a diverse independent production sector in both French and English. The Act provides that the programming provided by the system should "include a significant contribution from the Canadian independent sector."
- 23 The policy objective of sustaining a vigorous independent production sector is particularly important now that the Commission has allowed the highest level of concentration possible between broadcasting and distribution undertakings.
- 24 Accordingly, the CCA agrees with the Commission's position that the services that are part of these groups should be subject to a condition of licence requiring that at least 75% of PNI expenditures be allocated to independently-produced programs and that the groups should commission PNI production from all regions of Canada, commensurate with their presence in the respective markets in which they broadcast.

25 In a similar vein, CCA opposes the various proposals which would reduce or eliminate conditions of licences requiring specialty services to acquire programming from independent producers. There is no justification for these proposals and they must be firmly rejected by the Commission.

### **Establishing exhibition requirements**

26 CCA notes that a CPE requirement alone is not sufficient to correct the existing programming imbalance that exists in English broadcasting and we insist that such requirements must be accompanied by exhibition requirements.

27 CCA believes it is not appropriate to develop group-wide exhibition requirements. With the exception discussed below, current exhibition requirements should be retained.

28 CCA proposes that each OTA broadcaster be required to schedule at least two hours of drama or scripted comedy in the 8:00-11:00 pm time slot, Sunday-Friday, each week. This is the time when most Canadians are watching television and requiring broadcasters to schedule a minimum level of drama and scripted comedy will provide them with a strong incentive to work to make these programs successful. As shown by the Nordicity study published in 2009, if broadcasters properly promote these programs and make them hits, they will make a profit for the broadcaster after the first network repeat.

29 CCA also suggests that appropriate exhibition requirements be instituted for other programs of national interest

### **Conclusion**

30 In summary, the CCA recommends the following to the Commission:

- that CPE be established as a minimum a 30% of total revenue for each group, with the possibility of scaling upwards over the course of the five-year licensing period;
- that the Commission maintain existing CPE requirements for specialty and discretionary services;
- that PNI expenditure requirements be established as follows for each of the four groups:
  - Shaw: 10%
  - Corus: 10%
  - Rogers: 5% initially, growing to 10% over the five-year licence
  - CTV: 8% initially, growing to 10% over the five-year licence

- that the Commission establish for each group a condition of licence requiring that at least 75% of PNI expenditures be allocated to independently-produced programs;
- that each OTA broadcaster be required to schedule at least two hours of drama or scripted comedy in the 8:00-11:00 pm time slot, Sunday-Friday, each week;
- that appropriate exhibition requirements be instituted for other programs of national interest, particularly long-form documentaries and children's programming.

31 It is our conviction that if the CRTC establishes the CPE and PNI expenditure requirements we have recommended above, it will have gone a long way to fulfill its responsibilities with regards to the Canadian Content objectives set out in the *Broadcasting Act*.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Alain Pineau', written in a cursive style.

Alain Pineau  
National Director

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