Writers Guild of Canada

August 3, 2010

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 2010-413 – Application by CTV Limited to amend the broadcasting licences of CIVI-TV (Victoria), CHWI-TV (Windsor), CFPL-TV (London), CKVR-TV (Barrie), CHRO-TV (Pembroke) and CHRO-TV (Ottawa), collectively known as the "A" Stations

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. The WGC wishes to **oppose** the above-mentioned Notice of Consultation and the referenced application.

2. In this application CTV is requesting that the conditions of licence for the "A" Stations be amended to:

   - Eliminate all exhibition requirements relating to priority programming;

   - Reduce overall Canadian content exhibition requirements to 55% of the broadcast year; and

   - Revise existing obligations relating to described video by removing the "original" requirement and expanding the scheduling window and nationality of programming that qualifies.

3. CTV's argument for these requested amendments is that a) these amendments would be consistent with the Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television service* and b) that it

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would be consistent with the regulatory relief granted to the buyers of CHCH-TV (Hamilton) and CHEK-TV (Victoria) in 2009.

<u>2010 TV Policy</u>

4. As all industry stakeholders are well aware, the Commission developed the intricate 2010 TV Policy after an extensive review of submissions and a lengthy public hearing. The policy has many integrated components which as a whole are intended to provide Canadian broadcasters with regulatory flexibility while still ensuring support for Canadian programming. The WGC was disappointed to have to wait to see the TV Policy implemented as it will finally reinstate an expenditure requirement on conventional broadcasters and as well as create an expenditure requirement for Programs of National Interest (i.e. drama, documentaries and award shows). However, we have been told by the Commission that certain steps need to be taken before the policy can be implemented. For example, the definitions of documentary and award shows need to be agreed upon and will be as part of Broadcasting Notice of Consultation 2010-470. Then broadcasters will provide the Commission with historical expenditure data for those categories. The WGC has requested that the historical expenditure be reviewed over the last five years to give a more accurate picture than the three year period set out in the TV Policy. Only then can the Commission set a proposed expenditure requirement which the broadcasters can use in their applications for licence renewal. Licence renewal hearings are currently scheduled for Spring 2011 with the intention of implementing the new TV Policy in new licences starting September 1, 2011.

5. So we are surprised to see CTV asking that elements of the new TV Policy be implemented earlier. Firstly, the new TV Policy is not an 'a la carte' menu from which broadcasters can pick the rules that they like and leave behind the ones that they do not like. The Commission worked hard to balance elements of flexibility with regulatory requirements. The WGC supported the reduction of the overall Canadian content exhibition requirement from 60% down to 55% because in return there would finally be an expenditure requirement ensuring that Canadian broadcasters would prioritize high quality Canadian programming and specifically support Programs of National Interest and in particular drama. The expenditure requirement ensures that broadcasters will not spend the least amount possible to fulfil their Canadian Content exhibition requirement (i.e. reality shows, news, sports) while dedicating the balance of their programming budget to American programming.

6. The WGC also supported the elimination of priority programming because in its place there would be an expenditure requirement for Programs of National Interest. As 75% of Programs of National Interest will need to be independently produced, replacing the 75% of priority programming rule, the Commission is maintaining the principle enshrined in the *Broadcasting Act* that the Canadian broadcasting system include a significant contribution from the Canadian independent production sector. Eliminating priority programming without replacing it with provisions for Programs of National Interest or any other method of supporting independently produced dramas and documentaries would be a devastating blow to independent production.

7. Accordingly, CTV's proposal that the "A" Stations should be entitled to reduce their Canadian Content requirements without making any Canadian content expenditure requirement cannot be characterized as a request for an early implementation of the 2010 TV Policy. It is simply a request to fill more of their program schedule with more low cost Canadian programming and American programming both in the day and in prime time.

8. What is in the "A" Stations program schedule right now? Canadian programs include old episodes of "Littlest Hobo" (1963-65 and 1979-85), "Road to Avonlea" (1990-96), "Degrassi: The Next Generation" (currently airing Season 4 from 2004-05), "Instant Star" (currently airing Season 4 from 2008) and industrial (ie not 10 out of 10 point) Canadian series "Sue Thomas F.B. Eye (2003-05). There are repeats of last year's "The Listener" and this past season's "Stargate: Universe" and "Defying Gravity" (also a less than 10pt Canadian series). What do these series have in common? They are all in the CTV library. "Littlest Hobo" was produced by Glen Warren Productions, a sister company of CTV and therefore is fully owned by CTV. They have aired on CTV or Space or both channels at least once and in the case of some of the older programs many, many times. We do not have access to the "A" Station financial records but we cannot believe that these programs cost much if anything to the "A" Stations.

9. On the other hand, the "A" Stations have quite a bit of current American programming. During the day they air current episodes of talk show "The Ellen Degeneres Show, soaps "All My Children" and "General Hospital" and in prime time air "Cold Case", "Law & Order: SVU", "Caprica", "Fringe", "The Vampire Diaries" and a number of Hollywood feature films such as "Paycheck" and "Independence Day". Again, some of these programs also air on CTV and Space but some do not. They are all more current than "Littlest Hobo" and "Road to Avonlea". The allocation of licence fees for these programs to the "A" Stations must be substantial.

10. It may be true that the "A" Stations are in financial difficulty. As mentioned above we do not have access to the financial records for the "A" Stations but trust that the Commission will review those records as part of this application. We find it odd that CTV only looks for relief from its Canadian programming obligations as a solution to financial difficulties. As set out above in paragraph 7 it does not seem that the cost of Canadian Content for the "A" Stations could be that much compared to its more current American programming. Surely spending a little less on U.S. prime time series and Hollywood movies would have more impact on the bottom line than fewer episodes of "The Littlest Hobo"?

11. The other side of the equation is how much advertising revenue these programs can generate. Conventional broadcasters have repeatedly told this Commission that they need to broadcast more American programming because it can generate more ad revenue than Canadian programming. However given the "A" Stations programming schedule it appears that in some of the program slots at least they have given little thought to advertising revenue. It appears as if CTV is dumping old programming that they own on "A" Stations merely in order to meet Canadian content exhibition requirements. Episodes of programs that are decades old are unlikely to generate as much ad revenue as current

programming of any origin. CTV is trying to say that the only solution is to replace "Road to Avonlea" and "Sue Thomas F.B. Eye" with more American programming: "A reduction from 60% Canadian content overall to 55% would give the "A" Stations the scheduling flexibility to replace a non-performing domestic program with a profitable foreign one"[1]. Why not replace a non-performing domestic program with a current profitable Canadian program? It is exactly this kind of thinking which has resulted in the excessive spend on foreign drama which has been reported over the last few years. As the Commission will recall, in 2009 the English language private conventional broadcasters spent on foreign drama more than 24 times their expenditure on Canadian drama[2], despite the global financial crisis which impacted their ad revenues.

12. The Commission was well aware of the excessive spend on foreign drama by conventional broadcasters. It called for comments on proposals to curb that excessive spend in the last few public hearings on TV Policy. The Commission decided that rather than impose a brake on foreign expenditure it would instead set a floor for Canadian program expenditure to limit broadcasters' ability to spend excessively on foreign:

   "84. The Commission notes that, although there was general agreement among parties that rising expenditures on foreign programming have significantly contributed to the current financial difficulties of English-language conventional television broadcasters, there was no general support for the imposition of a specific 1:1 ratio requirement between Canadian and non-Canadian expenditures.

   85. The Commission considers that the new CPE requirements, in conjunction with the requirement that licensees make commitments to the creation of programs of national interest, will be a more effective regulatory measure to ensure that an appropriate proportion of the financial resources of English-language television licensees be devoted to Canadian programming."[3]

13. We agree that there are other factors which could contribute to the difficulty of sustaining conventional networks, however clearly the Commission is in agreement with the WGC that excessive spending in Hollywood is a serious contributing factor. If conventional broadcasters will not curb that spending and prioritize Canadian programming as Canadian broadcasters licensed under the *Broadcasting Act* should do, then the Commission's regulatory policy will have to compel them to do so. It is therefore essential that all of the 2010 TV Policy be implemented as soon as practical and not just bits and pieces of it. This will not

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[1] Paragraph 25, Application by CTVglobemedia to Amend the Broadcasting Licences of the "A" Stations to Provide for Interim Regulatory Relief

[2] $572 million on English language foreign drama and $23.6 million on English language Canadian drama as per CRTC Financial Summaries for 2009.

[3] Paragraphs 84 and 85 of the 2010 TV Policy, Broadcasting Regulatory Policy 2010-167

only be in the best interests of the Canadian broadcasting system but the "A" Stations as well.

CHCH-TV and CHEK-TV as Precedent

14. As CTV well knows, CHCH-TV and CHEK-TV found themselves in very dire circumstances indeed when they were bailed out by new owners. Canwest was ready to close the stations, and did close Red Deer when no buyer was found. Due to bad programming decisions, including in particular the decision to shift from local stations to a secondary network for Canwest Global, the E! Network had lost most of its audience. In a recessionary year the assets were worth practically nothing and were sold for practically nothing. All stakeholders were happy that the stations had found a way to stay open. These individual stations proposed local programming schedules and best efforts to broadcast priority programming. As they were to be no longer part of a station group and had been losing money, the Commission felt that a best efforts commitment and a mid-licence term review, was the best way to proceed.

15. Those transactions can be distinguished from the "A" Stations in several ways. The "A" Stations are still part of a corporate group, even if looked at only as the "A" Stations. They enjoy the benefit of being able to amortize programming costs and other expenses over the entire CTV station group as well as over the "A" Stations. The CITY-TV station group, which is made up of five stations, has an obligation to broadcast 8 hours of priority programming per week. The "A" Stations are six stations. It would be inconsistent and inappropriate to relieve the "A" Stations from priority programming requirements when the CITY-TV stations had their exhibition requirements confirmed July 6, 2009[4]. On the other hand, CHEK-TV and CHCH-TV ceased to be part of a station group when they were individually bought from Canwest.

16. Those stations were bought in 2009 and both had very unique circumstances. Their parent company was in precarious financial health. This is not the case as we understand it for CTV. The global recession had a very serious impact on the ad revenues of conventional broadcasters, which seemed to hit bottom in 2009. 2010 appears to be a period of economic recovery. It would be premature of the Commission to make a decision based on the 2008-09 financial situation of the "A" Stations when CTV will be delivering the 2009-10 annual report to the Commission in a few months. We strongly suspect that the Commission will find that the "A" Stations performed much better in the 2009-10 broadcast year than they did in the previous year.

17. Broadcasters, such as the new owners of CHEK-TV and CHCH-TV, have advised the Commission that the only solution that would ensure that an independent station could keep its doors open is to broadcast low cost local programming that, because it is of interest to the local audience, is still revenue-

[4] Broadcasting Decision CRTC 2009-408 City-tv Licence Renewals

generating. This does not appear to be the strategy of the “A” Stations, whose schedule is full of national programming as outlined above. While the application says “With these changes . . . the “A” Stations will continue to be able to make local programming their primary focus”, when compared to the current program schedules of CHEK-TV and CHCH-TV this does not appear to be the case. CHCH-TV has 73 hours of local news and programming per week with 3 hour blocks of news in the morning and afternoon. CHEK-TV has a five hour block of local news and weather each weekday. Meanwhile “A” Stations are filling their day time slots with “The Ellen DeGeneres Show”, “All My Children” and “ER”. While CHCH-TV and CHEK-TV have been relieved of their priority programming obligations they are clearly fulfilling the local news and programming needs of their community. This cannot be said of the “A” Stations. If the “A” Stations are going to compare their situation to that of CHCH and CHEK-TV then they must be prepared to have it compared fully.

Conclusion

18. In conclusion, for the reasons stated above the WGC feels most strongly that this application is completely inappropriate and should be denied. The issues it raises should be dealt with in the full context of a licence renewal hearing with the application of the full 2010 TV Policy. To do otherwise would be unfair to stakeholders and would seriously undermine the 2010 TV Policy.

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

Yours very truly,

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