Writers Guild of Canada

April 29, 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 – Final Comments

Undertakings

"Please provide your views on whether Rogers should be allowed to roll up to 5 percent PNI over the license term or whether the 5 percent should be imposed immediately."

1. The WGC believes that the Commission was right to create a common PNI CPE for all large station groups as part of the 2010 TV Policy. A common PNI CPE creates a level playing field for all broadcasters as it imposes expenditure requirements based on each broadcast group's revenues. However, it is clear that at the moment, Rogers has few opportunities to amortize the cost of PNI programs across their station group.

2. There are other issues at play here. Rogers has made it clear that it intends to spend just as much on foreign programming, regardless of where the PNI CPE is set. Part of the reason that the Commission decided to go back to an expenditure requirement was to have that requirement act as a brake on excessive spending on foreign programming, particularly drama. In 2009, the year of the recession, Canadian private broadcasters reduced their expenditure on Canadian drama but increased it on foreign resulting in a 24 to 1 ratio in favour of foreign drama. To give some perspective, the ratio was 5.2 to 1 in 2000 and had climbed to 9.1 to 1 in 2008. It was a deliberate choice to so substantially increase their foreign spending on drama. These broadcasters, including Rogers, have stated in the current hearing that they will continue this pattern of excessive spending on foreign drama regardless of the required level of spending on Canadian drama. This is particularly egregious coming from Rogers; given that CITY-TV's perilous financial position is due in part from its excessive spending in Hollywood.

3. Finally, it must be mentioned as it was by Commissioner Katz, that while sports services are not part of the calculation of CPE and PNI CPE, Sportsnet is part of the Rogers Broadcasting group and is very profitable. That profit as well as the deep pockets of Rogers Communications, could allow Rogers to continue its

366 Adelaide Street West
Suite 401
Toronto, Ontario M5V 1R9

Tel 416 979-7907
1-800-567-9974
Fax 416 979-9273
info@wgc.ca www.wgc.ca

excessive spend on Hollywood drama while claiming a need to spend less on Canadian drama in order to turn the CITY-TV services around. It is possible that CITY-TV might never come out of the red while Rogers Broadcasting itself remains overall profitable. Rogers has the ability to make that happen.

4. Based on the foregoing, it is the WGC's position that while a higher PNI CPE of up to 10% of gross revenues (based on historical expenditures) should be imposed by the Commission on all station groups, it may be appropriate to require only a 5% PNI CPE from Rogers. A roll up to 5% by the end of the term would be providing Rogers with an excessive 'break' that is not warranted by the circumstances.

   "Please file data used to support your statement that spending on Canadian drama dropped from 4 percent of conventional revenues in 2000 to 1.5 percent in 2009."

5. All data was pulled from the Commission's Annual Conventional Television Financial Summaries. Gross revenues for English Canada were arrived at by deducting Quebec from all Canada and grossing the revenues up by 1.05% to account for English Canada. English Canadian drama expenses were arrived at by deducting Quebec drama expenses, less CTF top up, from all Canada drama expenses, less CTF top up, and then grossing up the expenses by 1.05% to account for English Canada. The following chart demonstrates the actual calculations made:

2000			2009	
All revenue	1,871,303,224		All revenue	1,970,528,501
Quebec revenue	424,121,226		Quebec revenue	421,769,665
Canada ex Quebec	1,447,181,998		Canada ex Quebec	1,548,758,836
x 1.05%	1,519,541,098		x 1.05%	1,626,196,778
Canadian drama	98,318,634		Canadian drama	75,405,169
less CTF	19,785,728		less CTF	17,611,822
Total Canadian drama	78,532,906		Total Canadian drama	57,793,347
Quebec drama	19,651,214		Quebec drama	36,519,185
less CTF	256,631		less CTF	1,277,427
Total Quebec drama	19,394,583		Total Quebec drama	35,241,758

Canada ex Quebec	59,138,323		Canada ex Quebec	22,551,589
x 1.05%	62,095,239		x 1.05%	23,679,168
Canadian English Drama as a percentage of English revenue				
Drama	62,095,239		Drama	23,679,168
Revenue	1,519,541,098		Revenue	1,626,196,778
Percentage	4%		Percentage	1.5%

“Please file the 2009 Economics of Canadian Television Programming Report on the public record.”

6. The above-mentioned report prepared by Nordicity for the WGC, ACTRA and CFTPA (as CMPA was then called) is attached. As outlined in the Summary of Findings in the Report, the Report demonstrated that Canadian programming can make money and is not the loss leader that the broadcasters made it out to be. The Report was unable to take into consideration broadcasters’ participation in ancillary revenues such as DVD sales and download to own and as such represents a conservative analysis based solely on advertising sales and repeats across corporate groups. Again it must be said that American programming will always be more attractive to private broadcasters because as an acquisition it has a higher profit margin than the more expensive commissioned domestic programming. But it mischaracterizes the financial role of Canadian programming to call it a loss leader.

7. We would like to suggest that in order to arrive at a fuller picture of the economics of Canadian programming the Commission should undertake to update the Report and expand it to include ancillary revenues such as DVD sales and download to own. The Commission should be able to access these broadcaster revenues which are unavailable to other stakeholders. We find it very hard to believe CTV when it told the Commission that it makes no revenue from “Flashpoint” DVD sales and iTunes downloads. We are not in a position to provide you with the specific broadcast licence agreements for the series but we do note that “Flashpoint” is available on iTunes branded as a CTV show and with a CTV copyright notice. We do not believe that CTV is providing “Flashpoint” to iTunes for no financial gain. They must be earning revenue either as a distributor (and taking commission) or the more usual business model of sharing iTunes revenues 50/50 with the producer. The Commission will note that in the draft Terms of Trade submitted by the broadcasters and the CMPA, the 50/50 revenue share for download to own is a standard term available to broadcasters upon payment of an additional licence fee. Given the amount of television programming available on iTunes, and the iTunes preference for negotiating package deals with broadcasters rather than with individual producers, we expect that the Commission will find that this revenue-sharing term is included in most broadcast licences.

8. One other issue which was not taken into account in preparing the Report was the value of running Canadian programming merely to meet exhibition requirements. Through review of program schedules it is clear that broadcasters are rerunning inexpensive old Canadian programming in late night and early morning time slots. Canadian programs like “Littlest Hobo”, “Relic Hunter” and “Outer Limits” are still on the air. As they can have little expectation of earning ad revenue given how old the shows are, they must be on the air to fulfill the overall exhibition requirements (e.g. 60% for conventional to be reduced with this licence term to 55%). There is a clear cost-savings to airing these old programs to fulfill regulatory obligations which was not factored into the overall economics of Canadian programming but perhaps should be. That being said, if the expenditure requirements are set at high enough levels, there will be more original programming and fewer opportunities to meet regulatory obligations by airing old programming. This balance between expenditure requirements and exhibition requirements is one of the key components of the 2010 TV Policy but does require a high enough expenditure requirement to be effective.

9. The WGC would also like to suggest that it is inappropriate to consider the profitability of award shows. Programs that ‘celebrate Canadian creative talent’[1], or award shows, were included in PNI because they were considered by the Commission to be of national interest. They are a support system for both broadcasting talent but also all forms of Canadian culture. Some of these awards shows can be profitable but as they are ephemeral by nature and have little repeat value they cannot be held up to the same standards of profitability as drama and documentaries. We would also like to point out to all of the broadcasters that not all award shows need to be expensive productions and that not all award shows have broadcast licences. The WGC Screenwriting Awards could be inexpensively broadcast and would promote Canadian screenwriters and Canadian film, television and digital media at the same time.

Additional Comments

Common PNI CPE

10. The 2010 TV Policy granted the broadcasters a great deal of flexibility in exchange for guaranteed commitments to Canadian programming and PNI. The broadcasters appear to want the benefits of the 2010 TV Policy, i.e. the increased flexibility, without the responsibilities, i.e. commitment to Canadian programming. The 2010 TV Policy was a balanced policy framework. We urge the Commission to stick to the principles of the policy framework by refusing to grant additional flexibility or lowering the responsibilities to Canadian programming. To do otherwise would risk undermining that delicate balance.

[1] Broadcasting Regulatory Policy 2010-167 para 71

11. One of the specific commitments to Canadian programming contained in the 2010 TV Policy is the PNI CPE. In the WGC's written submission to this proceeding we recommended a common PNI CPE for all broadcast groups to be set at 10% of gross revenues (with the possibility of the lower PNI CPE of 5% for Rogers due to its asset mix). Despite all of the arguments made by the broadcasters, the WGC still agrees with the Commission that a common PNI CPE as set out in the 2010 TV Policy is appropriate. It creates a level playing field and provides broadcasters and the Commission with the consistent application of policy as broadcasters' commitments to Canadian programming are proportionate to their revenues. Based on the information available to us from the broadcasters' applications it appeared to us that 10% would be an appropriate figure as it was close to the historical expenditure on PNI by all broadcasters other than Rogers. However, over the course of the hearing we also heard that broadcasters submitted new financial data and new analysis of that data. We were privy to very little of this new data and analysis. We are therefore not in a position to revise our proposal based on this new data. It is therefore even more important that the Commission consider issues which we would have preferred to address ourselves in review of the data.

12. CTV does not deny that its PNI spending is over the 5% which the Commission clearly stated was the minimum PNI CPE as it was based on the Commission's analysis that spending on drama alone had been 5%. However, CTV argues that despite the fact that during recessionary years they consciously lowered their spending on Canadian drama and increased their spending on foreign drama as a way to manage lower revenues, now that they have recovered from the recession they cannot afford to spend more on PNI. They have spent more in the past but now they do not want to. We urge the Commission to ignore this self-serving attempt to lower regulatory obligations and avoid one of the principles of the 2010 TV Policy. Commission policy should not be allowed to be amended just because a broadcaster does not like it.

13. Shaw addressed the amount for PNI CPE by revising their data in the middle of the hearing to remove spending on reality programs which had previously been counted as documentaries for the purposes of priority programming and by alleging that their spending on drama had actually been less than the Commission had thought based on previous data. The WGC feels strongly that if Shaw had been inappropriately including reality programs as documentaries in order to meet their priority programming minimums, they should not be allowed now to remove those programs from documentary spending in order to reduce their historical expenditure. This is not about changing definitions (which attempted to put a stop to exactly this behaviour and focus support on true documentaries) or about changing CMF definitions (as CMF has always excluded reality programming from documentaries but like the CRTC has tightened its definitions). CMF's rules for funding eligibility are completely irrelevant to the question of classification for compliance with CRTC regulation. This is about historical expenditure and if Shaw filed historical data counting lifestyle as documentaries then it should be held to those historical expenditures. If they are allowed to revise historical data to exclude programming that was

'incorrectly' classified as priority programming we would then expect that Shaw would be required to make up for the resulting shortfall in meeting their 8 hours of priority programming for those years.

14. Finally, given the amount of production at Shaw in the past few years we find it very hard to believe that they only spent 3.5% on drama in 2010. We do not have access to the data but we do know the titles that were commissioned in 2010 and it was an active year for Shaw. We ask the Commission to review the data carefully as we find it hard to believe that "Blackstone" (8 episodes), "Endgame" (13 episodes), "Haven" (13 episodes), "King" (8 episodes), "Lost Girl" (13 episodes), "Rookie Blue" (13 episodes), "XIII" (13 episodes), "Drunk & On Drugs Happy Funtime Hour" (6 episodes), "Masters of the Plazaverse" (8 episodes) and "Single White Spenny" (8 episodes) resulted in even less spending on Canadian drama than in 2009: "Rookie Blue" (13 episodes), "Crash and Burn" (13 episodes), "Shattered" (13 episodes), "Cashing In" (7 episodes), "Pure Pwnage" (8 episodes). Shaw projects spending of only 2.5% on Canadian drama in 2011 however it is already shaping up to be a good year with more episodes of "Haven" and "Lost Girl" and the new series "Hot Zone". We cannot do any more than question these numbers but we ask the Commission to take a very close review of them as they do not add up based on our information.

Benefits Spending and Capacity

15. The WGC was surprised by how much time was spent by the broadcasters at the hearing trying to use benefits packages as an excuse to lower their CPE and PNI CPE obligations. Bell and Shaw both worked hard in their recent acquisition hearings to minimize their benefits, allocate them to non-programming categories and avoid counting incrementality. Now they are yet again trying to undermine an aspect of the benefits policy, the requirement for incrementality, by arguing that benefits in the system should allow them to reduce the PNI CPE obligations. They appear to see this as a second opportunity to attempt to reduce their overall commitment to Canadian programming which resulted from the two transactions. We urge the Commission to stand firm and uphold the principles of both the benefits policy and the 2010 TV Policy by not taking the benefits into consideration when arriving at the PNI CPE.

16. The broadcasters, and Shaw and CTV in particular, tried to make the argument that there was insufficient capacity to meet the needs of a higher expenditure requirement on PNI. Shaw argued that they were so constrained by the current size of the talent pool that they were forced to bring up 'the younger guys' who 'don't have the experience to be pulling it off'[2]. Shaw also alleged that when four or five dramas are running at the same time they are all stealing from each other to staff their writers' rooms. Bell argued that a guaranteed flow of funds would act

[2] Christine Shipton, abridged Shaw Media transcript, April 6, 2010, paras 1488-1497

as a disincentive to create great drama, that producers, and we assume screenwriters, would be lazy if 'funds were guaranteed to them regardless of the quality that they produce'[3].

17. Many members of the WGC were offended to hear themselves criticized in this way. They listened in disbelief as Shaw and CTV tried to cite a lack of sufficient talent as an excuse to spend less money on Canadian drama. The Canadian writing pool of experienced writers is large and constantly being renewed with new, younger talent. If Canadian broadcasters are not aware of the depth of existing writing talent then perhaps they need to educate themselves. U.S. broadcast executives regularly scout for new writing talent including coming to Canada to search for talent. This is how a Canadian writer like Jason Jones ended up on "The Daily Show" and Canadian writer Barry Julien became the head writer on "The Colbert Show". Based on the experience of WGC members, Canadian broadcast executives are not showing the same initiative but serve more of a corporate function with little involvement in the writing community.

18. The broadcasters' claims about the Canadian writing talent pool are clearly unfounded. Shaw alleged that productions have had to steal from one another to staff writer rooms because it was so hard to find experienced writers. However, a quick review of last year's busy production year shows very little overlap in writing talent. Writing rooms are generally four to six screenwriters engaged for the length of the show plus a few additional episodes sent out to freelance screenwriters. In 2010 during the summer/fall production season "Rookie Blue", "The Listener", "XIII" and "Endgame" were all in production at roughly the same time without a single overlap in screenwriters. As well, primarily very experienced screenwriters such as Tassie Cameron, Cal Coons, Denis McGrath and Graeme Manson were engaged. There were a few less experienced screenwriters engaged but it is also essential to regularly hire new, younger talent in order to keep the talent pool growing and thriving[4].

19. Could the WGC membership manage an increased level of production? It has. As mentioned above, in 2000 the spending on English-Canadian drama was approximately $62 million. That was the year of such great productions as "Cold Squad", "Da Vinci's Inquest" and "Traders", productions which spawned some of the top showrunners in Hollywood today including David Shore ("House") and Hart Hanson ("Bones"). We are now at $23 million for 2009. If production levels continue to plummet we are at risk of losing more of our talent pool to the U.S. but until that happens there are sufficient talented and experienced Canadian screenwriters to create high quality drama at much higher levels than broadcasters are currently financing. We assure the Commission that there is sufficient creative capacity to meet higher expenditure levels.

---

[3] Kevin Crull, abridged CTVglobemedia transcript, April 4, 2010, para 400

[4] Source – WGC Internal Statistics

20. We feel it necessary to also point out to the Commission that great Canadian drama is dependent on a number of factors and not just how hard the producer works or how creative the screenwriter is. There must also be sufficient development of the program, there must be a variety of projects to chose from so that only the best are made, there must be sufficient development financing and production financing to produce high quality drama and finally there must be enough talented broadcast executives who know how to pick the right programs, provide the right notes, and promote and schedule the program effectively. Broadcasters are the gatekeepers as they decide which programs will be broadcast. They need to take more responsibility for the programs that they chose. However, there is no guarantee that a program will hit a chord with audiences and be successful. If there was a clear recipe to create hits then we would all, including the U.S. networks, be making more hits.

WGC In Camera Session

21. In the WGC's oral presentation we raised for the first time the concept of an 'in camera' session for stakeholders other than the broadcasters. After reviewing the transcripts of the in camera session, we realize now that what we are looking for is an off the record conversation with the Commission rather than in camera. At many points in the hearing the broadcasters identified problems of capacity or made generalizations about how programs were developed, produced or exploited. We would like to provide the Commission with specific examples to clarify or refute the broadcasters' assertions however we cannot do so without jeopardizing the careers of those involved. Screenwriters need to be approved by a broadcaster before a producer can engage them and any screenwriter who contradicts a broadcaster in a public forum runs the very real risk that they will not be approved in the future. With consolidation there are fewer doors to knock on and screenwriters cannot afford to have even one of them closed to them.

22. We have met with the Commission at numerous times over the years to have private, off the record, discussions about big issues such as the funding of Canadian drama. What we are asking for now, and in relation to future hearings, is the opportunity to have off the record conversations, where necessary, to address issues raised by broadcasters that may or may not be financial in nature but which would provide the Commission with the opportunity to hear and question specific screenwriters without jeopardizing their careers.

Showcase Narrative Description

23. As the WGC asked for narrative descriptions for all specialty services without them, we were pleased that the Commission asked Showcase to propose a narrative description. However, the proposed narrative description effectively is no more than a restatement of the conditions of licence of the service together with a vague statement to 'focus on drama'. A narrative description is in many

ways a statement of the brand of the service. For Space it is ‘science fiction, science fact, speculative science, technology and fantasy’. History’s description is ‘programs that embrace both current and historical events’. Specific narrative descriptions such as those belonging to Space and History make it easier for the Commission to enforce genre protection. The WGC believes that genre protection and the resulting programming diversity is important to a healthy Canadian broadcasting system. Only a healthy Canadian broadcasting system with happy audiences can withstand competition from the unregulated sector. As well, genre protection ensures that screenwriters know which service is best suited to their program and what other complimentary programs will surround it on the schedule.

24. The WGC recommends that Showcase’s narrative description should be based on the description found in the licensing decision CRTC 94-280, namely ‘Showcase will offer an all-fiction programming service consisting of the best of independently-produced movies, drama, comedy and mini-series from Canada and around the world. We would also like to point out that the original application requested that the 10% cap on programming from the U.S. be lifted to 50% however verbally Shaw requested the cap only be lifted to 20%. In the Shaw Media undertakings filed April 14, 2011 the proposed nature of service refers to a 20% cap on U.S. programming while the footnote refers to a cap of 50% on U.S. programming. The WGC continues to argue that an increase in U.S. programming would result in Showcase becoming a home for U.S. reruns of shows that had started on Shaw’s conventional networks.

<u>Programs of National Interest</u>

25. At several points the Commission asked the broadcasters if they would be interested in an expanded definition of Programs of National Interest which would allow them to include variety programs like “Canadian Idol” or reality programs like “Ice Pilots” in their PNI CPE. The WGC strongly supports the limited definition of PNI which was set out in the 2010 TV Policy and which has been applied throughout this hearing. Should the Commission feel that it is necessary to have a policy hearing to expand the definition of PNI, the WGC will at that time go into more detail in our objections to such an expansion. In the meantime, for clarity, we encourage the Commission to reiterate that questions raised during the hearing did not signal a relaxed interpretation of PNI going forward.

<u>Conclusion</u>

26. The WGC urges the Commission to stick to the principles of the 2010 TV Policy. The Commission arrived at a policy which balanced the requested flexibility for broadcasters with a commitment to Canadian programming. To provide additional flexibility or reduce the commitment to Canadian programming undermines the entire policy and throws it off balance. Without that balance we will all be back to square one in our struggle, and the Commission’s struggle, to

solve the problem of the decline of Canadian drama on the Canadian broadcasting system.

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

Yours very truly,

Maureen Parker
Executive Director

c.c.: National Council, WGC
Kelly Lynne Ashton, Director of Policy, WGC
David Spodek, CTVglobemedia (david.spodek@ctv.ca)
Sylvie Courtemanche, CorusEntertainment(Sylvie.courtemanche@corusent.com)
Charlotte Bell, Shaw Media (charlotte.bell@shawmedia.ca)
Susan Wheeler, Rogers Broadcasting (susan.wheeler@rci.rogers.com)

Schedule 1

2009 Economics of Canadian Television Programming

(see attached)

*** end of document ***