

August 19, 2024

Filed Electronically

Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Part 1 Application – 2024-0385-6 – Blue Ant Media Inc.: Amend conditions of licence re: Programs of national Interest (PNI)

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 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 and Indigenous programming.
2. This application filed by Blue Ant Media Inc. (Blue Ant) seeks to, “amend the Blue Ant Group’s existing condition of licence with respect to expenditures on programs of national interest (“PNI”) to 5% of the previous year’s gross revenues of the undertaking”.¹
3. The WGC **opposes** this application.
4. This is the latest in a series of applications filed over the past year or so by broadcasters seeking to eliminate or reduce their obligations to support Canadian programming following passage of Bill C-11, the *Online Streaming Act*, and to do so on a piecemeal basis, outside of the context of a structural or policy hearing, and while the Commission is still in the middle of a consultation process designed precisely to implement that very same *Online Streaming Act*.² These applications are, in our view, clear and inappropriate

¹ Blue Ant cover letter, para. 2.

² Other such applications include Bell Media Inc., Application No. 2023-0379-1, Corus Entertainment Inc., Application No. 2022-0946-0, Rogers Media Inc., Application No. 2023-0373-3, and Bell ExpressVu Limited Partnership, Application No. 2024-0125-6.

attempts by broadcasters to undermine the larger policy framework review by undercutting its foundations before they can even be built. These applications raise issues that are far more appropriately dealt with in the context of the very policy framework proceeding the Commission has already embarked upon. The applications, if granted, would seriously hurt Canadian creators, deprive Canadian audiences of programming choice, and fail to further the objectives of the *Broadcasting Act*. The WGC has opposed these other applications on similar grounds, as we oppose this one.

5. In the present application, Blue Ant acknowledges that its rationale to reduce its PNI obligations is “not novel” and is essentially the same as put forward by Corus, Bell, and Rogers in their similar applications.³ Blue Ant also acknowledges⁴ that the Commission has suspended these applications, and has determined that it, “will consider them as part of the implementation of the amended *Broadcasting Act*.”⁵
6. The WGC submits that this alone should effectively settle the matter of Blue Ant’s application. The Commission has chosen—correctly, in our view—to consider recent applications to vary PNI spending obligations as part of the larger implementation of the *Broadcasting Act* as amended by Bill C-11. Blue Ant has acknowledged that its application is fundamentally the same as those that have been suspended. The Commission should similarly suspend Blue Ant’s application on the same basis.
7. As to substance, such as there is, in Blue Ant’s brief, two-page cover letter, it includes the claim that PNI obligations, “force broadcasters to spend their production budgets on certain genres of programming in a manner that is not aligned with their business strategy or with audience demand.”⁶ This is ironic given that PNI expenditure levels were set not that long ago based on what broadcasters themselves had historically chosen to spend on PNI. Blue Ant laments that foreign streamers have “100% flexibility to program their services based on what audiences want to watch”.⁷ Yet many of these self-same streamers choose to fill their catalogues with drama programming, including children’s programming and animation, and documentaries—i.e. the same genres that Blue Ant implies audiences don’t want. Moreover, it is the very same ongoing structural review of the broadcasting system that Blue Ant’s application seeks to sidestep that will almost certainly eliminate that “100% flexibility”, leveling the playing field as intended by the *Online Streaming Act* by setting equitable regulatory obligations across the Canadian broadcast system. As Blue Ant knows, change is already coming at the systemic level.

³ Blue Ant cover letter, para. 3.

⁴ Blue Ant cover letter, para. 5.

⁵ Broadcasting - Secretary General Letter addressed to the Distribution List, *Subject: Part 1 applications filed by Bell, Corus, Quebecor and Rogers seeking amendments to conditions of service for their respective television services, and procedural requests in regard to those applications, filed by the Forum for Research and Policy in Communications and the Public Interest Advocacy Centre*, 13 May 2024.

⁶ Blue Ant cover letter, para. 3.

⁷ Blue Ant cover letter, para. 3.

8. Blue Ant also points to its PNI expenditure level of 13.5% as, “one of the highest...among Canadian broadcasters.”⁸ But, again, this level was set based on Blue Ant’s own historical spending levels. And while 13.5% is higher than some broadcaster groups as a percentage, the very fact that it *is* a percentage means that it also scales to Blue Ant’s revenues.
9. As we have stressed in previous similar applications, the entire purpose of PNI is to single out these particular genres that are in need of support. As the Commission stated when it created PNI:

The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus 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.⁹

10. PNI was created as a foundational element of the Group-based licensing policy,¹⁰ it was continued in an even more central role in the “Let’s Talk TV” “Create” decision¹¹ of 2015, and it was upheld through the group-based licence renewal proceedings of 2017 and 2018, including the PNI reconsideration decision in which the Governor in Council found the issue to be so vitally important that it sent it back to the Commission after the Commission had set PNI levels too low.¹² Changes to this policy strike at the heart of the objectives of the *Broadcasting Act*, and should be considered within the larger structural process that is currently ongoing.
11. Canadian broadcasters have already received significant regulatory relief through the elimination of Part II licence fees to the Commission,¹³ valued at over \$120 million.¹⁴ PNI obligations already self-adjust to the financial fortunes of broadcasters, since they are expressed as a percentage of gross revenues of the previous broadcast year. This means that any revenue declines have *automatically* translated into lower spending obligations, as a matter of course. And in their application, Blue Ant’s answers to the standard form questions undermine their own arguments for the pressing need for change. Asked, “If

⁸ Blue Ant cover letter, para. 4.

⁹ Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

¹⁰ Broadcasting Regulatory Policy CRTC 2010-167.

¹¹ Broadcasting Regulatory Policy CRTC 2015-86.

¹² Broadcasting Decision CRTC 2018-335.

¹³ *Broadcasting Act*, section 11(3.1).

¹⁴ In Broadcasting Order CRTC 2022-295, *Broadcasting Licence Fees – Part II*, the Commission set Part II licence fees at \$123,706,535 for 2022.

this amendment is approved, will there be any programming changes as a result of this amendment?”, Blue Ant answers, “No”.¹⁵ Asked, “Will the proposed amendment result in a change to existing financial projections?”, and “Do you consider that your proposed amendment is necessary for the financial viability of your station?”, Blue Ant answers to both questions, “No”.¹⁶

12. The Commission has already said that, “regulated entities will remain subject to the same requirements to which they were bound prior to the coming into force of the current *Broadcasting Act*,”¹⁷ and, “existing contributions by traditional broadcasters will not change as a result of Step 1, but will form part of the Step 2 discussion.”¹⁸
13. For all of these reasons, the WGC submits that the Commission should deny this application by Blue Ant, and focus instead on resolving the structural issues raised in this application through the structural process that the Commission has already initiated.
14. In closing, we would also like to reiterate the significant regulatory inefficiency and administrative burden imposed upon interveners by having to respond individually to one similar application for regulatory relief after another. The WGC, like many creative guilds, unions, and associations, is a small organization with limited resources. We do not have the resources that broadcasters and broadcast groups have, even the smaller ones. “Small” for them is bigger than we could ever expect to be.
15. In this case, Blue Ant appears well aware of exactly what the Commission has already decided in relation to these piecemeal applications, but has chosen to file theirs anyway to, in their words, “stress the urgency and necessity” of the situation.¹⁹ The paucity of substance in Blue Ant’s two-page cover letter further supports the conclusion that this is an application made not with the reasonable expectation of success on its merits, but to “make a point” to the Commission and/or others about the current pace of proceedings. It is fundamentally deficient in terms of evidence, statistical or otherwise, and in terms of a meaningful level of discussion and analysis upon which to base a decision on the relief requested.
16. With respect, applications such as this should not be filed to make a point about urgency, and this one should not have been filed in the first place. The WGC is also anxiously awaiting the implementation of C-11 and its promise to fundamentally revive our sector. We do not see the value in broadcasters peppering the Commission with applications in

¹⁵ Blue Ant Application – Amendment to Licence, pg. 4.

¹⁶ Blue Ant Application – Amendment to Licence, pg. 4.

¹⁷ Broadcasting Information Bulletin CRTC 2023-137, *Guidance on the current Broadcasting Act and the transitional provisions of the Online Streaming Act*, para. 4.

¹⁸ Broadcasting Notice of Consultation CRTC 2023-138, para. 54.

¹⁹ Blue Ant cover letter, para. 5.

the meantime, which simply create more work for the Commission itself, getting in the way of the job of implementing the *Online Streaming Act*, while forcing organizations like the WGC to spend, in this case, more than double the word count in refuting the applications that Blue Ant spent in making theirs.

17. We thank the Commission for the opportunity to participate in this proceeding.

Yours very truly,

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

Neal McDougall
Assistant Executive Director, WGC

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