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Ontario

Ontario Media Development Corporation

Société de développement de l'industrie des médias de l'Ontario

Filed Via CRTC Broadcasting Intervention / Comments Form

9 February 2011

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2010-952
Group-based Licence Renewals for English-language Television Groups

Ontario Media Development Corporation (OMDC) is pleased to file the attached in response to the Commission's above-mentioned proceeding.

OMDC is an Agency of the Ontario Ministry of Tourism and Culture that facilitates economic development opportunities for Ontario's cultural media industries. As the central catalyst for Ontario's cultural media cluster, OMDC promotes, enhances and leverages investment, jobs and original content creation through a variety of initiatives.

OMDC is not requesting to appear at the Commission's public hearing commencing on April 4, 2011.

We now proceed to the substance of our submission and comments on the broadcasters' applications for licence renewal.

Sincerely,

Karen Thorne-Stone
President and Chief Executive Officer
Ontario Media Development Corporation

cc: David Spodek, CTVglobemedia Inc. (david.spodek@ctv.ca)
Charlotte Bell, Shaw Media Inc. (cbell@canwest.com)
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Kyle Glieheisen, Shaw Cablesystems Limited (kyle.glieheisen@sjrb.ca)
Susan Wheeler, Rogers Broadcasting Limited (susan.wheeler@rci.rogers.com)

Executive Summary

1. Ontario Media Development Corporation (OMDC), as a supporter of screen-based content creation in the province of Ontario, is pleased to participate in the Commission's group-based licence renewal proceeding in order to promote a regulatory environment that is responsive to the business realities and needs of Ontario's cultural media industries. We support the licence renewal applications that are currently before the Commission but feel there is some room for adjustments that will bring those applications more in line with the framework set out in the CRTC's group licensing policy.

2. OMDC supports the imposition of Canadian Programming Expenditure (CPE) requirements for corporate groups at the level of at least 30% of corporate revenues. In addition, corporate groups should be required to spend at least 5% of their revenues, and ideally more, on the acquisition of programs of national interest, namely, scripted dramatic and comedy programming, long-form documentaries and national award shows that promote Canadian culture to Canadians.

3. We believe that the group-based licensing policy provides a great deal of flexibility for Canadian broadcasters. Therefore, we do not support the idea that broadcasters should have the ability to spend less than 30% on CPE in any given year. The expenditure requirement should be considered a floor for Canadian content spending, not a cap intended to limit the amount broadcasters spend on Canadian content.

4. Spending requirements should be accompanied by program exhibition requirements that are consistent with what the Commission set out in the group licensing policy. For this reason, OMDC does not support the elimination of exhibition requirements on specialty services as proposed by the broadcast groups.

5. In addition, requirements related to the acquisition of programming from the independent production community should continue to be upheld. These requirements should be accompanied by the implementation of equitable terms of trade arrangements that ensure producers are adequately compensated for the use of their intellectual property.

6. Finally, we support Commission regulatory policies that ensure there is a place for all Canadians in the broadcasting system. This includes not only the independent production sector, but also Canadians from all minority and ethnic groups, as well as those with disabilities.

7. The implementation of this policy gives broadcasters the flexibility to evolve and grow in the changing entertainment environment while at the same time ensuring appropriate support for the creation and presentation of Canadian programming.

Introduction

8. Ontario Media Development Corporation (OMDC) is pleased to file the following in response to Broadcasting Notice of Consultation CRTC 2010-952 (the "Notice") on group-based licence renewals for English-language television groups, as well as on the related broadcaster applications for renewal.

9. OMDC is an Agency of the Ontario Ministry of Tourism and Culture with a mandate to build the capacity and competitiveness of Ontario's cultural media industries. Through tax credits, programs and services for the film and television, book and magazine publishing, music and interactive digital media industries, OMDC maximizes opportunities for growth and innovation in Ontario and abroad.

10. The government of Ontario's media tax credits, administered by OMDC, are an importance source of financing for all kinds of content creation. In fiscal 2009-10, OMDC issued over 1,300 tax certificates valued at almost $270 million to support content creation for projects in Ontario's cultural media industries with budgets totalling nearly $2.7 billion.

11. Also in 2009-10, OMDC invested directly in screen-based domestic content through the OMDC Film and Interactive Digital Media Funds. Fifty-seven projects with budgets of almost $110 million received production support through these programs.

12. Ontario is a centre of excellence for Canadian film and television production. In 2008, Ontario film, television and video production companies earned $1.36 billion in operating revenue, 41% of the national total. Ontario companies also had a profit margin of 9.3% in that year, compared to 4.4% nationally.[1] Decisions in these licence renewal proceedings will have a direct bearing on this economic activity and the 40,000 jobs[2] it creates and will shape the business environment for Ontario's independent production sector for the immediate future.

13. Given our role as supporters of the creation of screen-based content, OMDC is pleased to have this opportunity to comment on the group-based licence renewals currently before the Commission. Our goal in participating in this process is to promote a regulatory environment that is responsive to the business realities and needs of Ontario's cultural media industries. To that end, we support regulatory policy 2010-167, "A group-based approach to the licensing of private television services,"(the "group licensing policy") and its implementation through this proceeding. We are in favour of approving the applications for licence renewals filed by CTVglobemedia Inc. (CTVgm) (Application #2010-1261-6), Shaw Media Inc. (Application #2010-1307-8) , Corus Entertainment Inc. (Application #2010-1350-8) and Rogers Broadcasting Limited (Application #2010-1253-3), with some amendments as outlined in the following pages that we feel will bring those applications more in line with the framework set out in the group licensing policy.

14. In regulatory policy 2010-167, the Commission, after extensive public consultation, struck a balance between offering flexibility and efficiencies to broadcasters while at the same time ensuring that those broadcasters continue to contribute significantly to the creation and presentation of Canadian programming. The amendments to the licence renewal applications that we are suggesting in this submission are intended to ensure:

    - appropriate levels of investment in the production of high quality Canadian content;
    - the airing of that content on Canadian screens at times when Canadian audiences are watching;
    - significant representation on those screens from the independent production sector; and
    - fair compensation for those producers for the rights associated with their content.

15. As a provincial Agency, OMDC is aware that the Agency and the producers we support are only one part of the overall broadcasting system in Canada, and that the Commission's responsibilities cover a much larger group of interested parties. OMDC offers the following comments in the spirit of working in co-operation with the Commission and with our stakeholders to promote Canadian content. In this submission we have limited our responses to those issues which most directly relate to this goal. We have consulted with stakeholders in the screen-based production sectors in preparing this submission.

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[1] Statistics Canada, "Film, Television and Video Production 2008," Catalogue #87010X, Tables 1 and 2.
[2] Canadian Media Production Association, *Profile 2010: An Economic Report on the Screen-Based Production Industry in Canada*, January 2011, p. 12.

Canadian Programming Expenditures (CPE)

16. In the public proceeding leading to the group licensing policy, OMDC supported the concept of group-based CPE requirements, set as a percentage of revenues, for both conventional and Category B services, as well as the continuation of expenditure requirements for Category A services.[3] It was our position then, and continues to be our position now, that this CPE should be set at a level that ensures that corporate groups are spending at least as much as they have historically spent on Canadian programming. Ideally, we would like to see the level of investment in Canadian programming increase as a result of the new policy. We therefore support the imposition of a CPE that is at least 30% of revenues for all corporate groups and that includes at least 5% of corporate revenues being spent on Programs of National Interest (PNI), defined as drama and comedy (category 7), long-form documentary (category 2*b*) and national award shows that promote Canadian culture to Canadians.

17. This minimum CPE level should apply equally to all corporate groups who are applying for licence renewals under the group licensing policy. This ensures transparency and consistency in the system and a level playing field for all companies. Therefore, the Commission should not approve the lower CPE requirements proposed by some of the applicants but rather should set group CPE and PNI commitments at no less than 30% and 5% of corporate revenues for all applicants.

18. Furthermore, if the intention is to maintain spending on PNI at historic levels, we submit that the Commission should consider implementing even higher levels of PNI than the suggested 5%. The 5% level was derived based only on spending on dramatic programming during the years 2007-09, and to spread the same percentage across two additional categories can only lead to a decrease in spending in all three categories. We note that the lack of financial data available publicly on actual spending on PNI programs makes it difficult for us to ascertain what the historic spending levels have been and therefore to suggest what the appropriate percentages should be. We suggest that the Commission look closely at the confidential information they have before them to realistically assess broadcasters' historic levels of spending and set an appropriate PNI percentage based on those levels. This will ensure that broadcasters' investments in scripted dramatic and comedy programming and long-form documentaries are not decreased over the next five years.

19. The corporate groups whose licence renewals are being considered during this proceeding will be benefiting from the extensive flexibility that has been built into the group licensing policy. However, as a group the broadcasters have proposed an additional layer of flexibility through an under- or overspend on their CPE by 10% in a given year, provided the underspend is made up in the following year and the overall CPE requirement for the full term of the licence has been met. While acknowledging the historical precedent for this request, OMDC's position is that broadcasters' ability to spend their CPE across the licensed services in their corporate groups gives them an effective tool to ensure that they can meet their CPE obligations and that there is no need to permit any additional flexibility. In fact, we submit that if this flexibility is granted, the likely outcome will be that by the end of the licence term not a single broadcaster will have spent any more than exactly the 30% of revenues on CPE that is the absolute minimum.

20. The group licensing policy gives broadcasters many opportunities to benefit from administrative efficiencies and the ability to balance spending across their corporate groups. Our hope is that the

[3] For the purposes of simplicity in this submission, we are using the terms Category A and Category B services to refer to what were previously analog and digital Category 1 specialty and pay services and Category 2 specialty services, as this is how they will be categorized going forward and in order to be consistent with how the CRTC referred to them in the Public Notice and how the applicants have referred to them in their licence renewal applications.

savings these efficiencies bring to broadcasters will result in a greater investment in the creation and promotion of Canadian programming. The 30% CPE requirement is the minimum level of investment that will be required, but we assume that when it is in the best business interests of a broadcaster to invest in Canadian content they will do so, even if they have spent their full CPE commitment for the year. In no way should broadcasters ever be encouraged to view their 30% CPE as a "cap" on their investment in Canadian programming.

21. OMDC is aware that Rogers Broadcasting Limited has proposed significantly lower CPE and PNI spending levels due to their smaller size compared to the other corporate groups, the current unprofitability of their conventional stations, and their lower historic levels of spending on programming that falls into the PNI categories. We are prepared to accept that Rogers is in a period of transition with its broadcasting assets and may need a longer period of time to adjust to new CPE requirements. It is also in the best interests of the broadcasting system as a whole to be responsive to exceptional circumstances and flexible in specific cases of extreme need. We would therefore not oppose giving Rogers some flexibility to permit underspending in the first year of the licence term, provided that their overall CPE and PNI for the full term of the licence ends up being at least 30% and 5% (or higher) for the five-year period. In other words, if they need a year or two to adjust their business model and grow their CPE in the immediate future, they should compensate for that with a higher CPE in the later years of their licence term.

22. OMDC's support for this temporary lower CPE requirement for Rogers should not be interpreted as support for the idea that such requirements in any way represent a burden on broadcasters. It is only a recognition of the fact that the company is going through a period of transition and there is a business case for some temporary regulatory relief while they complete this transition. We believe that this is also consistent with the intent of the group licensing policy to set spending requirements at levels that are in line with broadcasters' historic spending levels while ensuring there is a fair and consistent policy for all broadcasters.

Exhibition Requirements

23. Investing in Canadian content is of little use if audiences are not given the opportunity to see that content. Canadian content should be aired on the most accessible channels at times when people are watching. This is why the group licensing policy provision that conventional television stations must devote at least 55% of the broadcast year, and 50% of the evening broadcast period, to the broadcast of Canadian programming is so important[4] – it gives content the chance to be discovered a wide audience.

24. At the same time, the group licensing policy acknowledges that the audience is becoming increasingly fragmented and that specialty services, which were designed to appeal to just such audience fragments, have an equally important role to play in making content available to Canadian audiences. In support of this the policy is quite clear that exhibition requirements for specialty services will be maintained along with the implementation of group-based CPE requirements, stating that "the Commission will continue to impose Canadian content exhibition requirements for specialty services on an individual basis."[5] For this reason, OMDC is opposed to the wholesale reduction of exhibition requirements on specialty services that the majority of broadcasters have proposed.

25. Broadcasters have stated that given the fact that they are required to invest financially in Canadian programming and also have general exhibition requirements, there is no need to impose additional

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[4] Broadcasting Regulatory Policy 2010-167, *A group-based approach to the licensing of private television services*, March 22, 2010, para. 64.
[5] Ibid., para. 65.

exhibition requirements specific to specialty services or any other provisions that would ensure the airing of original, first-run Canadian programs across a variety of channels. OMDC submits that financial investment in Canadian programming needs to be accompanied by airing Canadian programs at times and on services where Canadian audiences can easily find them.

26. OMDC's goal is to ensure that a wide variety of programming is available to and discoverable by Canadian audiences. In addition to maintaining specialty service exhibition requirements, this can be accomplished by maintaining the expectations regarding original, first-run programming that are currently in place for specialty services. Broadcasters should, and under the group licensing policy do, have the flexibility to air programming on more than one of their services. However, without some requirements to air original, first-run programs, there is a risk that broadcasters will shift all their Canadian content to specialty services with fewer subscribers, creating a situation where that content is doomed to never find the appropriate audience.

27. We also believe that the fact that the group-based licensing policy under which these licence renewals are being considered specifically indicated that the exhibition requirements would be upheld demonstrates that the Commission shares our feeling that specific requirements are needed to ensure the airing of Canadian content. History has shown that in the absence of such specific requirements broadcasters have tended to favour foreign programming over Canadian content in every regard. We therefore request that the Commission retain service-specific exhibition requirements on specialty services, as set out in the group-based licensing policy.

28. We note that Rogers Broadcasting has also asked to be released from its licence requirement to air 100 hours of Canadian feature film per broadcast year on its Toronto and Vancouver Citytv stations, a request the Commission has already once denied.[6] OMDC feels that all broadcasters have a role to play in the funding and airing of Canadian feature films and that Rogers' obligation to air these hours of programming is an important way to reach Canadian audiences with these films. However, we would not be opposed to giving Rogers the ability to spread the 100 hours in a limited way across their corporate group, rather than restricting those hours to the conventional stations.

29. OMDC would also like to see other broadcasters show a greater interest in supporting Canadian feature films. As with all screen-based content, the proliferation of viewing options for audiences means that feature films depend on many distribution channels to reach their audience. This includes conventional and specialty channels as well as pay and video-on-demand services. Recent figures indicate that broadcaster licence fees are making up an increasingly smaller portion of feature film funding,[7] a trend that OMDC would like to see halted if not reversed. We are therefore in favour of maintaining all existing broadcaster commitments that support the creation and exhibition of Canadian feature films.

Independent Production

30. Independent producers are a critically important piece of the Canadian broadcasting system, bringing a diversity of voices and stories to Canadian television. Not only that, but the Canadian broadcasting system is designed to make specific use of the independent production community. The *Broadcasting Act* states, in section 3(i), that not only should programming include a significant contribution from the independent production community, but that the programming should "be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes." The diverse nature of the independent

[6] Broadcasting Decision CRTC 2009-408, *Rogers Broadcasting Limited – Citytv – Licence renewals*, 6 July 2009.
[7] PricewaterhouseCoopers for CAFDE/CFTPA, *Study of Canadian Feature Film Sales to Canadian TV Broadcasters*, January 2011.

production community means that independent producers are ideally suited to deliver this wide variety of programming.

31. The existing exhibition requirements related to independent production on the specialty services encourage broadcasters to work with producers to licence original programming for each of their services. Broadcasters have argued that their obligation to spend 75% of their PNI on independent production means that most of these requirements are now unnecessary and can be eliminated. Rogers has also argued that they should also be eliminated from their conventional services. However, as with other exhibition requirements, in the group-based licensing policy, the Commission stated that "specialty services that currently have individual requirements relating to independent production will retain those requirements."[8]

32. OMDC therefore feels that as a rule independent production level requirements should be maintained at current levels across the board. The intent of such requirements is to ensure that a significant portion of programming from independent producers is aired, when people are watching, on a variety of a corporate group's services. The requirements have been successful in contributing to a healthy Canadian independent production sector. For example, Corus's obligations regarding independent production on YTV and Treehouse have played an important role in maintaining a wide variety of diverse voices in children's programming on those services and helped to cement Canada's reputation as a world leader in the production of this kind of programming. With no obligation to draw on independent production, there is a risk that the market for this programming will be unfairly curtailed, to the detriment of the sector as a whole.

33. In the spirit of ensuring flexibility, OMDC is willing to accept that there may be a better mechanism than specific requirements for each specialty service that will achieve the same objective as outlined above. However, we are unconvinced by the broadcasters' arguments that the PNI expenditure on independent production requirement is the only such obligation that is needed, and would like to see something other than just their assurances that independent production levels will be maintained. At present, this mechanism is the exhibition requirements on the specialty services, but a different solution that achieves the same goal would also be acceptable.

Other Matters

Terms of Trade

34. It is also important that independent producers be entitled to negotiate fair value for the use of their content. Recent consolidation in the broadcasting industry, which in part has led to the group-based licensing policy that will be of benefit to the broadcasters in these large corporate groups, has meant that there are fewer avenues for producers to access in marketing their projects and that broadcasters are expecting to acquire programming to be used across all of their programming services. According to the Canadian Media Production Association (CMPA) (at the time the Canadian Film and Television Production Association),

> The reality is that most conventional TV broadcast groups are now requiring independent producers to license their programs for broadcast on many or all of their services, at little or no incremental cost, effectively eliminating the ability of independent producers to seek second- and third-window licences as a means to finance their productions or to enhance revenues, as was once commonplace. This is having a significant impact on independent producers' ability to

[8] Broadcasting Regulatory Policy 2010-167, para. 95.

develop new program ideas and to properly grow and develop their businesses and to build corporate capacity.[9]

Given their reliance on Canadian broadcasters as a market for their content, it is more important than ever to ensure that terms of trade are in place between producers and broadcasters in order to ensure that fair business practices are upheld.

35. While we are not involved directly in the terms of trade negotiations between producers and broadcasters, OMDC believes that there are certain underlying principles that should form the basis for any terms that are implemented:

- where broadcasters are acquiring rights for content across various platforms, the value assigned to the "bundle" of rights should reflect the size of and content in the bundle and producers should be compensated accordingly;
- agreements should not inhibit producers' ability to exploit other rights associated with a project that a broadcaster has not acquired; and
- content that has been acquired should be made available to an audience within a reasonable amount of time, and if not those rights should revert back to the producer for exploitation.

Adherence to these principles should ensure that producers are able to benefit from the exploitation of their intellectual property in a fair and equitable manner.

On-Screen Diversity

36. While the Notice specifically points out that the licensees' cultural diversity corporate plans and annual reports are not part of this proceeding, we would like to emphasize our ongoing support for the existing regulatory policies that serve to ensure that the Canadian broadcasting system is representative of all members of Canadian society. This includes making sure that all cultural and ethnic groups, as well as people with disabilities, are represented fairly and accurately in all types of television programming. It also includes ensuring these groups continue to have equal access to the many employment opportunities the broadcasting system provides, both on- and off-screen.

Conclusion

37. The group-based licence renewals that are currently before the Commission are of pivotal importance to the content creation sector in Ontario and to the broadcasting system as a whole. As audience viewing habits continue to evolve, broadcasters and producers will also be required to evolve to meet their needs. With the group licensing policy, OMDC believes that the Commission has made sure that broadcasters have the flexible regulatory environment they needed to encourage change and growth, while at the same time providing appropriate regulatory support for the creation and presentation of Canadian content.

38. It is because of the importance of investing in Canadian content that OMDC is supporting minimum spending requirements of at least 30% of revenues across corporate groups, with 5% or more directed to PNI, as an excellent starting point for the current five-year licence term for all corporate groups. Combined with exhibition requirements on all television services, these investments will lead to the

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[9] CFTPA Submission, *Broadcasting Notice of Consultation CRTC 2009-113- Licence Renewals for Private Conventional Television Stations*, March 2009, para. 144.

production of high-quality Canadian dramatic and documentary programming that Canadian audiences want and are able to watch.

39. OMDC also supports the central place given to independent producers in the group licensing policy. Maintaining expectations related to the use of independent production as set out in the policy will ensure that the standards of the *Broadcasting Act* will continue to be met. And terms of trade that support appropriate compensation for those producers will contribute to strong content creation companies who are able to maintain and grow their businesses.

40. All of which is respectfully submitted.

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