

Le 19 octobre 2020

Monsieur Claude Doucet
Secrétaire général
Conseil de la radiodiffusion
et des télécommunications canadiennes
Ottawa (Ontario) K1A 0N2

Re: **Broadcasting Notice of Consultation CRTC 2019-91, 2020-336, *Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic***

Monsieur le secrétaire générale :

1. On Screen Manitoba is pleased to provide the following comments with respect to Broadcasting Notice of Consultation CRTC 2020-336, *Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic* (BNC CRTC 2020-336).
2. *On Screen Manitoba est l'association de l'industrie de la production audiovisuelle du Manitoba. Nos membres sont des scénaristes, des réalisateurs, des producteurs, des syndicats, des fournisseurs de service, des festivals de films et d'autres organismes et individus ayant un intérêt dans ce secteur au Manitoba. Ceux-ci représentent plus de 60 compagnies de production et fournisseurs de service, soit quelques 2500 individus.*
3. *Parmi nos membres se trouvent des individus des milieux anglophone, francophone, autochtone et multiculturel. La diversité linguistique et culturelle de la production indépendante au Manitoba est un atout qui enrichit le système national de la diffusion du contenu Canadien.*
4. In reviewing the application from the Canadian Association of Broadcasters / *l'Association canadienne des radiodiffuseurs* (CAB / ACR), we considered both the English and French-language markets. On Screen Manitoba opposes the CAB / ACR proposal that due to the financial impact of the COVID-18 pandemic, the Commission
 - a. consider private broadcasters, absent any bad faith on their part, in "deemed compliance" for all conditions of licence (COLs) and regulations relating to spending for the 2019-2020 broadcast year; and,
 - b. provide flexibility for exhibition-related and other COLs subject to a "should resources permit" condition.

5. The COVID-19 pandemic has indeed had a significant impact on all aspects of Canadians' private and professional lives, as well as on the economy overall. The necessary period of confinement earlier this year included a production stoppage that affected some 172,000 workers in the Canadian media production industry and resulted in a loss of more than \$2.5 billion in production volume.¹ The impact on broadcaster revenue would also appear significant. Recent media stories² note that Broadcasters have seen higher audience numbers, but a decline in revenue.
6. While media production resumed this summer, creatives, producers and broadcasters have all had to adapt to working during a pandemic, including covering the costs associated with new, necessary health and safety measures. As the pandemic continues, uncertainty remains as to the economic impact of the second wave of the pandemic and the potential impact of government imposed restrictions to reduce the spread of COVID-19.
7. Amidst the continued uncertainty, and the very real financial impact of COVID-19, the federal government has provided a variety of needed financial supports to creatives, producers and broadcasters. This included providing broadcasters with early relief from the CRTC's Part I licence fees for the 2020-21 fiscal year representing \$30 million;³ another \$30 million investment was made, mostly with Canadian media organizations for a national awareness campaign about COVID-19;⁴ a \$25 million emergency relief fund for independent broadcasters,⁵ \$115.8 million in emergency support for the audiovisual sector,⁶ and a \$50 million short-term compensation fund for Canadian audiovisual productions to compensate for the lack of insurance coverage for COVID-19-related filming interruptions and production shutdowns.⁷ Additionally, the CAB is seeking financial support from the federal government for the broadcasting sector through other initiatives, such as relief from the Commission's Part II licence fees for approximately \$116 million and reimbursement for 600 MHz relocation expenses for television stations.⁸

¹ Nordicity COVID-10 Impact Analysis: <https://cmpa.ca/wp-content/uploads/2020/04/Nordicity-COVID-19-Impact-Analysis.pdf>.

² <https://financialpost.com/telecom/bce-profit-plunges-64-on-covid-19-economic-turmoil-and-lower-tv-revenue>

³ <https://www.canada.ca/en/canadian-heritage/news/2020/03/covid-19-the-government-of-canada-provides-relief-to-the-broadcasting-sector.html>.

⁴ <https://www.theglobeandmail.com/politics/article-ottawas-plan-to-offer-support-for-media-organizations-losing-ad/>.

⁵ https://www.cab-acr.ca/english/pdf/covid-19/ERF_guidelines2_e.pdf.

⁶ Federal government announces \$115.8 million in COVID-19 related funding for screen-based industry: <https://www.canada.ca/en/canadian-heritage/news/2020/05/backgrounder-emergency-support-fund-for-cultural-heritage-and-sport-organizations.html>.

Federal government announces COVID-19 insurance fund for Canadian production sector: <https://www.canada.ca/en/canadian-heritage/news/2020/09/government-of-canada-announces-temporary-measure-to-compensate-for-the-lack-of-insurance-coverage-for-production-stoppages-due-to-confirmed-covid-1.html>

⁸ https://www.cab-acr.ca/english/pdf/CAB_Covid-19_Letter.pdf.

8. In its application the CAB / ACR does not set out what level of Canadian programming expenditures have not been met in the 2019-2020 year. On Screen Manitoba notes that because broadcasters' expenditures on Canadian programming is determined by a percentage of the previous year's gross revenue, relief from a drop in revenue is built into the condition of licence (COL).
9. On Screen Manitoba agrees with other interveners that regulatory relief could be addressed by providing private broadcasters with more time to meet their COLs and other regulatory obligations related to expenditures in the 2019-2020 broadcast year. We support the CMPA's proposal that large private ownership groups be granted two years and all other private broadcasters be granted three years to distribute the Canadian programming expenditures not spent in the 2019-2020 year. This proposed time period coincides with the end of current licence terms.⁹
10. Further, we believe that any broadcasting licensees wishing to benefit from this additional flexibility relating to required spending for the 2019-2020 broadcast year must provide details relating to the type and amount of non-compliance in a new report to the Commission and continue to file this report on an annual basis with updates on spending until the non-compliance from the 2019-2020 broadcast year has been remedied.
11. This proposed flexibility to extend more time for broadcasters to meet 2019-2020 spending requirements aligns with the Commission's preliminary view in BNC CRTC 2020-336 "that it may be more appropriate to adopt an approach, applicable to all broadcasters, whereby it would determine a broadcaster's compliance with its regulatory obligations for the 2019-2020 broadcast year based on whether that broadcaster has fulfilled such obligations over a more protracted period of time."¹⁰
12. In addition, the proposed flexibility meets the Commission's stated outcomes in BNC 2020-336 that:¹¹
 - a. the viability of the Canadian broadcasting sector is not further harmed;
 - b. parties that currently benefit from the requirements imposed by the Commission on broadcasters are not unreasonably affected as broadcaster investment in Canadian programming, PNI, independently-produced programming, and tangible benefits required in 2019-2020 will still be made within the current broadcast licence periods;
 - c. current news and information programming to Canadians is maintained; and

⁹ Large private ownership groups include Bell, Corus, and Rogers in the English market and Bell Média (including Groupe V Média), Corus and Quebecor Média in the French market. Large private ownership groups in both markets expire August 31, 2022, and for all other broadcasters August 31, 2023.

¹⁰ BNC CRTC 2020-336, at para 26.

¹¹ BNC CRTC 2020-336, at para 23.

- d. the proposed new annual report summarizing non-compliance in the 2019-2020 broadcast year, and the subsequent annual remedy over the course of the current private broadcast licences will ensure accountability to the Commission and the public with minimal administrative burden on licensees that request relief.
13. Broadcasting licences are a privilege that comes with a responsibility to contribute to the Canadian broadcasting system by commissioning, producing, and acquiring Canadian programming to provide audiences with high-quality, relevant content. The proposed approach to provide flexibility over a defined period of time:
- a. reflects the CRTC's recent approach to addressing broadcaster requests for financial relief, in BNC 2020-205, the Commission instructed Super Channel to meet its full Canadian programming expenditures because those contributions "are owed to the broadcasting system;"¹² and,
 - b. mitigates any sudden drops in broadcaster spending on Canadian programming, PNI, independently-produced programming, and tangible benefits because it allows broadcaster expenditures on Canadian programs to be redistributed evenly over a defined period of time, this would provide some needed predictability for broadcasters, creators and producers. Should the Commission determine to implement our proposal, we humbly submit that the Commission may wish to put in place an expectation of even distribution of expenditures.
14. We have provided replies to the Commission's questions in BN 2020-336 below. We reserve the right to amend or otherwise vary our views in the reply phase of this proceeding.

Q1. Does the CAB's proposal align with the outcomes for this proceeding as set out above? If not, how could the CAB's proposal be modified to better align with these outcomes?

RESPONSE:

15. On Screen Manitoba notes that the CAB / ACR proposal appears to meet the CRTC's measure of ensuring continued news and information programming; however, we believe that the CAB / ACR proposal would further harm the Canadian broadcasting sector by "wiping out" Canadian program expenditures for the 2019-2020 year. This would have a negative effect on the whole of the Canadian broadcasting system as these contributions to the system would be lost forever.
16. Loss of the 2019-2020 Canadian programming expenditures would result in overall less funding in the Canadian broadcasting system and the potential for fewer programs or for programs of lesser quality for Canadian viewers. The revenue of the large group broadcasters in 2018-2019 was in fact more robust than it has been in some time with Bell Media and Corus posting

¹² BD CRTC 2020-205, at para 64.

increases in revenue and Rogers recording its smallest decline in several years.¹³ These expenditures on Canadian programming are owing to the Broadcast system and should be provided over a defined time period.

17. Further, On Screen Manitoba notes the Commission's long-standing commitment to evidence-based decision-making. The CAB / ACR takes a broad approach and without summarizing the level of expenditures on Canadian programming that have not been made in the 2019-2020 broadcast year

18. In addition, the CAB / ACR requests a blanket approach. It does not provide any information in regard to the amount of financial relief being requested, it simply says expenditures may not be met in the 2019-2020 year. The proposal lacks also lacks detail in regard to the distinct realities of each of the English- and French-language markets, the differences between the television and radio markets, and, the difference in financial impact with regard to type of service (large vertically-integrated groups with subscription revenue from discretionary services, as opposed to independent broadcasters in small markets that are entirely dependent on advertising revenue).

19. Finally, the proposal from CAB / ACR does not consider the fact that relief from declining revenue is integral to the broadcasters' regulatory obligations to spend on Canadian programming, programs of national interest (PNI), and independently-produced programming, as the calculation for each expenditure is based on the broadcaster's gross revenues from the previous year. Decreased revenues in the 2019-2020 broadcast year will result in decreased required spending on Canadian programming, PNI, and independently-produced programming in the 2020-2021 broadcast year.

Q2. Does the approach align with the outcomes for this proceeding as set out above? Please explain. If not, how could this approach be modified to better meet the outcomes?

RESPONSE:

20. On Screen Manitoba submits that the proposed flexible approach to allow broadcasters to realize Canadian programming expenditure non-compliance in 2019-2020 over a two year period for large groups and a three year period for independent broadcasters along with a new annual report on the 2019-2020 Canadian expenditures (first to determine what the amount of underspend is and second to demonstrate once those expenditures have been met is compliant with all four outcomes identified by the Commission in BCN 2020-336.

Q3. Is this approach applicable equally to all expenditure- and exhibition-related requirements? If not, how should such requirements be treated?

RESPONSE:

¹³ Aggregate Annual Returns are available at this link <https://crtc.gc.ca/eng/industr/ann.htm>

21. On Screen Manitoba supports the CMPA's proposal as it applies to spending obligations, such as Canadian programming, PNI, independently-produced programming, and tangible benefits. In the event broadcasting licensees require the Commission to consider any other instances of non-compliance with COLs or regulations during the 2019-2020 broadcast year then we would suggest that those licensees make separate specific requests that clearly document the type and amount of non-compliance.

Q4. To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?

RESPONSE:

22. On Screen Manitoba's proposal only applies to private broadcasters. Neither the CAB / ACR application nor BNC CRTC 2020-336 refer to regulatory relief for public broadcasters.

23. In order to benefit from the proposed additional flexibility in regard to the timing of meeting 2019-2020 expenditure obligations, On Screen Manitoba believes that the private broadcasters should be required to submit a new report demonstrating the type and amount of non-compliance of 2019-2020 Canadian programming expenditures. Further we believe that this report should be filed annually with updates on expenditures until the full obligations have been met.

Q5. If the Commission were to adopt this approach, what period of time should be granted to broadcasters for meeting their regulatory obligations for the 2019-2020 broadcast year? Should these obligations be spread equally over a period of time or ramped up over time?

RESPONSE:

24. On Screen Manitoba supports the CMPA's proposal that the Commission grant large private ownership groups (Bell, Corus, and Rogers in the English-language market; and, Bell Media Inc. (including Groupe V Média), Corus Entertainment Inc., and Quebecor Media Inc. in the French language market) a two-year period and in the case of all other private broadcasters, a three-year period, during which 2019-2020 expenditures can be reallocated. These deadlines align with the end of licence terms on August 31, 2022, and August 31, 2023, respectively.

25. On Screen Manitoba also encourages the Commission impose an expectation that obligations be distributed equally over the two or three years to provide some stability to the broadcast system.

Q6. What possible regulatory relief or flexibility other than that requested by the CAB or proposed by the Commission could be granted to Canada's broadcasters and would align with the outcomes set out by the Commission? In proposing solutions, the following must be addressed:

i. What regulatory requirements should be subject to these proposed flexibilities?

- ii. **To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?**
- iii. **For how long should any flexibilities provided by the Commission to Canada's broadcasters apply?**

RESPONSE:

26. On Screen Manitoba's proposal aligns with the Commission's preliminary views on regulatory relief for broadcasters due to the COVID-19 pandemic and as a result we are not proposing any other approaches at this time.

Q7. On which elements of any flexibility proposed in the context of this notice of consultation should the Commission require broadcasters to report? On which elements should they be required to publicly report?

RESPONSE:

27. On Screen Manitoba has supported regular, transparent reporting as the best means for the Commission, interveners and the public to monitor the success of the Canadian broadcasting system. In this case, we propose that private broadcasters provide a new public report identifying any non-compliance and detailing the type and amount of unmet expenditure requirements for the 2019-2020 broadcast year. In subsequent years this public report should also include the type and amount of expenditures made until all obligations are met.

28. Further, we would request that the Commission ensure that the updates on 2019-2020 expenditures be integrated into other required Canadian programming reports in order to track the province where principal photography took place, the production companies involved, the language of production and whether a production takes place in an official language minority community (OLMC). This would help to ensure that any COLs or expectations relative to diversity of voice are met regardless of when the 2019-2020 Canadian programming expenditures are distributed. Regular, transparent reporting remains the most efficient means to demonstrate that broadcasters are meeting, or surpassing, requirements and expectations to commission and acquire content from a wide range of geographic regions including OLMCs.

Q8. What form and frequency should such reporting take? Are additional measures beyond current reporting requirements (relating, for example, to annual returns and the program logs) necessary in regard to reporting on and monitoring compliance with the proposed approach?

RESPONSE:

29. On Screen Manitoba proposes that the reports from private broadcasters on non-compliance with spending obligations in the 2019-2020 broadcast year be filed annually until all non-compliance expenditures have been met.

Q9. Are there any elements of this reporting for which broadcasters should be granted confidentiality?

RESPONSE:

30. On Screen Manitoba proposes a first report based on the existing public annual report providing a summary of the type and amount of non-compliance from the 2019-2020 broadcast year thus no confidentiality would be required. Any details on the 2019-2020 broadcast year would be included in existing annual reports as laid out under current broadcast licences.
31. If broadcasters have collectively lost significant revenue in the 2019-2020 broadcast year, this will translate into a smaller collective investment in Canadian programming in the 2020-2021 year. Creators and producers, already struggling as a result of lost revenue in the 2019-2020 year will have to adapt to smaller broadcaster budgets in 2020-2021, and the broadcasters will have to adapt to having fewer hours of Canadian programming available for broadcast. By evenly distributing the expenditure on Canadian programming that were not made in 2019-2020 over a two and three-year period potential ongoing volatility due to the pandemic will be “smoothed over.”
32. On Screen Manitoba firmly believes that providing flexibility in regard to when 2019-2020 Canadian programming expenditures must be met is a reasonable solution to the financial pressures of the COVID-19 pandemic that may have impacted private broadcasters’ capacity to meet Canadian program spending requirements in the 2019-2020 broadcast year. This solution allows creators, producers and broadcasters to continue to play their respective role in ensuring the objectives of the Broadcasting Act are met.
33. These respective roles include supporting a diversity of voices through the production of independently conceived and produced original Canadian content in all regions of the country, in English, in French and in Indigenous languages.
34. On Screen Manitoba appreciates this opportunity to provide its comments to the Commission.

Sincerely,



Nicole Matiation,
Executive Director / *Directrice générale*

C.c. Ms. Lenore Gibson, Chair, Canadian Association of Broadcasters

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