



February 9, 2011

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

Filed Electronically

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2010-952 – Group-based licence renewals for English-language television

The Canadian Media Production Association (the CMPA) welcomes the opportunity to provide the attached comments regarding the process and applications announced in the above-referenced Notice of Consultation.

The CMPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. The CMPA's 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

Given the importance of this proceeding to its members, the CMPA requests the opportunity to appear at the public hearing scheduled to commence on 4 April 2011 in Gatineau, to elaborate on its views expressed in this intervention.

Yours truly,

[original signed by Norm Bolen]

Norm Bolen
President & CEO

Attach.

cc: CTVglobemedia Inc.; Shaw Media Inc.; Corus Entertainment Inc.; Shaw Cablesystems Limited; Rogers Broadcasting Limited

**Intervention of the Canadian Media Production Association (CMPA)
Broadcasting Notice of Consultation CRTC 2010-952
Group-based licence renewals for English-language television**

Executive Summary

The CMPA supports the Group Licensing Policy (GLP) established in Broadcasting Regulatory Policy 2010-167 (BRP 2010-167) and is committed to making it work in a manner that will contribute significantly to achieving Canada's broadcasting policy objectives as set out in the *Broadcasting Act*.

The short list of regulatory obligations that remain under the GLP in order to balance the substantial flexibility broadcasters will now enjoy - a minimum group CPE, a minimum PNI CPE, Canadian programming exhibition requirements and requirements respecting independent productions - represent obligations which the Commission has clearly determined are necessary for the success of the system.

The Group-Based CPE: a *minimum of 30%* for each and every group

The base CPE applicable to each broadcaster group participating in this process should be *at least 30%*, meaning it should be *higher* than 30% unless the broadcaster can demonstrate that, based on the 2007-2009 period used by the Commission in BRP 2010-167, it should only be 30%. Thus, no broadcaster group's CPE should be any less than 30%, but it could be higher.

The PNI Expenditure: *more than 5%*

As the minimum 5% PNI CPE figure represents the broadcaster groups' average historical drama spending only, inclusion of spending for other PNI programming will cause that figure to increase. Given just the number of Canadian long-form documentaries historically produced, a significant increase to the 5% drama-based PNI CPE figure is fully justified.

The Commission should not grant Rogers' the PNI CPE relief it seeks. However, if the Commission finds that Rogers is deserving of some level of relief in this respect, it should still be required to ramp up to reach the minimum 5% level by the end of the licence term.

Canadian Content Exhibition Requirements

The Commission should reject any requests for Canadian content "parity" amongst specialty services or between those services and conventional television services as contrary to the GLP.

For the same reason, the Commission should resist efforts by the broadcaster groups to reduce any of their Canadian content exhibition levels.

The Requirements Respecting Independently-Produced Programs

The GLP establishes two requirements respecting independently-produced programs: at least 75% of PNI spending is to be allocated to independently-produced programs; *and* individual services are to retain their specific requirements relating to independent productions.

These twin obligations, *taken together*, are necessary to strike the desired balance “between supporting the independent production sector, ensuring a diversity of creative voices, and providing broadcasters with the flexibility to acquire the rights to programming that they broadcast.”

None of the broadcaster groups has taken issue with the obligation to allocate at least 75% of their PNI spending to independently-produced programs. However, the Commission should reject the broadcasters’ attempts to amend the GLP by relieving them of any obligations currently in their individual licences relating to independent production.

An Orderly Transition to the New Regime

The CMPA agrees with the broadcasters that the system and stakeholders need a reasonable opportunity to transition to the new flexible regime, in order to allow business models to adjust to the way in which broadcasters will change their historical program buying and scheduling practices and patterns, and to help mitigate any resulting unintended consequences.

Specifically, all qualifying licensees within a group should be permitted to attribute up to 25% of their required CPE to other qualifying services within the same group in the first year of their licence term. The 25% limit would then remain for conventional television stations through their licence term, but would gradually increase for specialty services: to 50% in year 2; then to 75% in year 3; and then to 100% in year 4 (and year 5).

Pay Television should be Excluded from the Group Licensing Policy

To prevent the erosion of historical Pay TV support for Canadian feature films, Pay TV services should be excluded from the GLP and the group licence renewal process.

Terms of Trade

Terms of Trade negotiations have resumed between the CMPA and CTV, Rogers and Shaw Media, with Astral and Corus also now having joined as parties to the negotiations.

In order to focus our collective efforts on the negotiations, the parties have agreed to work together to determine a future date to file final Terms of Trade submissions with the Commission (if necessary), rather than to do so now.

Conclusion

The Commission should reject any and all attempts by any of the broadcasters to amend or manipulate the GLP in a manner that would water down its obligations, or to relax its application, based on arguments about their future challenges. Those arguments have already been made, have already been accepted and have already been fully incorporated in the GLP.

The Commission's application of the new GLP should help broadcasters to succeed; it must also help Canadian programming to succeed, too.

Intervention of the Canadian Media Production Association (CMPA)

Broadcasting Notice of Consultation CRTC 2010-952 Group-based licence renewals for English-language television

Introduction

1. The upcoming group licence renewal hearing will be the first time that the Commission will apply its Group Licensing Policy (GLP) as established in Broadcasting Public Notice CRTC 2010-167 (BRP 2010-167). The CMPA supports the GLP and is committed to making it work in a manner that will contribute significantly to achieving Canada's broadcasting policy objectives as set out in the *Broadcasting Act*.
2. The GLP offers broadcasters a tremendous and unprecedented degree of flexibility respecting their Canadian programming obligations in order that they may quickly adapt as needed to the changing broadcasting environment. The Commission also provided specialty services increased programming flexibility in its 2008 discretionary services framework.¹
3. At the same time, the Commission has stated that the purpose of the GLP is also "to permit the Commission to ensure continued support for the creation of Canadian programming particularly in categories that continue to be under-represented in the Canadian broadcasting system, such as scripted drama and documentaries."² The CMPA urges the Commission not to lose sight of this equally important objective as it assesses the broadcasters' licence renewal applications, at both a group and individual service level.
4. In establishing the GLP, the Commission has removed what it has deemed to be "unnecessary barriers to the continued viability of private broadcasters"³. Thus the short list of regulatory obligations that remain under the GLP represent obligations which the Commission has clearly determined are necessary for the success of the system.

¹ The discretionary services framework announced in Broadcasting Public Notice CRTC 2008-100 simplified and streamlined the rules that govern both nature of service definitions and program categories from which services may draw programming: <http://www.crtc.gc.ca/eng/archive/2008/pb2008-100.htm>.

² BRP 2010-167, par. 27.

³ BRP2010- 167, par. 12.

5. Those few but critical remaining obligations are:
- A minimum 30% group-based Canadian programming expenditure (CPE) requirement⁴;
 - A minimum 5% group-based CPE for programming of national interest (PNI)⁵;
 - Canadian content exhibition requirements applied to conventional TV stations generally⁶ and to specialty services on an individual basis⁷; and
 - Requirements respecting independently-produced programs applied both at a group level and to individual services.⁸
6. As expanded upon in the following sections, the CMPA supports the appropriate application of each of these four obligations to each of the broadcaster groups.

The Group-Based CPE: a *minimum of 30% for each and every group*

7. In BRP 2010-167, the Commission stated its preliminary view that the base CPE level for each broadcast group should be a minimum of 30% of the group's gross revenues. The CMPA agrees that the base CPE applicable to each broadcaster group participating in this process should be *at least 30%*. It is possible that the CPE for one or more of the groups should in fact be higher than 30%.
8. In the group license renewal applications, CTVglobemedia Inc. (CTV) is the only broadcaster that is seeking the minimum base CPE level of 30%. The other three participating broadcasters all seek base CPE levels lower than the 30% minimum identified by the Commission: both Shaw Media Inc. (Shaw) and Corus Entertainment Inc. (Corus) seek a base CPE of 29.1%; Rogers Broadcasting Limited (Rogers) seeks a base CPE of 25%.
9. In determining on a preliminary basis that the base CPE for each group should be "a minimum of 30%", the CRTC clearly contemplated that 30% would serve as the floor for each of the broadcasters participating in the group licence renewal process, not the ceiling. The CMPA interprets the Commission's language in this regard as putting

⁴ *Ibid.*, at par. 60. Note that, in par. 48, the CRTC contemplated retaining individual CPEs for each specialty service in a group. However, the overriding requirement to meet a group-based CPE coupled with the ability to allocate CPE to other services appears to render individual CPEs redundant.

⁵ *Ibid.*, at par. 75.

⁶ *Ibid.*, at par. 64.

⁷ *Ibid.*, at par. 65.

⁸ *Ibid.*, at par. 95.

applicants on notice that 30% is the *lowest* CPE level the Commission is prepared to accept for each broadcaster, and that the onus is on each applicant to justify why the Commission should not establish a *higher level* for it.

10. Moreover, the CMPA interprets the fact the Commission relied specifically on the historical time period 2007-2009 to establish the minimum 30% CPE level means the Commission considers that both the minimum CPE level of 30% and the specific historical time period on which it is based are appropriate and determinative under the GLP. In this respect, we therefore interpret BRP 2010-167 as establishing that the CPE level for each broadcaster group participating in the process will be *higher* than 30% unless the broadcaster can demonstrate that, based on the 2007-2009 period, its group CPE level should only be 30%. On this basis, the Commission would not set a broadcaster group's CPE at a level any less than 30%, but could set it higher.
11. In this regard, the CMPA notes that all of the groups in this licence renewal proceeding are, or soon will be, part of (or affiliated with, in the case of Corus) very large (and very profitable) vertically integrated companies that have the financial resources to make substantial contributions to funding Canadian programming and, specifically, at levels of 30% of gross revenues or higher.
12. In making this argument, the CMPA also acknowledges CTV's view that the CRTC's intent in the GLP was that all broadcasters participating in the group licence renewal process would have the same group CPE level. This view, the CMPA notes, is based on the premise that, since the broadcaster groups all compete for the same types of programming (both Canadian and foreign) and for the same advertisers, they should all be subject to the same requirements related to CPE for the sake of consistency and competitive equity.
13. In the event the Commission chooses to adopt CTV's position that all broadcaster groups should be subject to the same group CPE, the CMPA submits that the bar should be set high for all; the lowest common denominator should not prevail.
14. Therefore, if all broadcaster groups are to be made subject to the same group CPE level, the CMPA submits that the common level should be set at a minimum of 30%, as CTV seeks; the Commission should therefore reject the lower levels that Shaw, Rogers and Corus seek. In this respect, the CMPA notes that the Commission based its assessment of the appropriate base CPE level on its analysis of the historical expenditures for CTV, Canwest (now Shaw) and Rogers, taken together. In doing so, it offered no suggestion that the results of any one of those companies justified a CPE lower than 30%.
15. Moreover, since the Commission included all three of these groups in making its 30% calculation, allowing any one of them a CPE lower than 30% would require boosting

the other(s) by a corresponding amount; otherwise, there would be a net loss of Canadian content spending in the system.

16. As regards Corus, it was fully aware when it made its determination to participate in this group licence renewal process that the Commission contemplated a minimum base CPE level of 30%. Having made the choice for its own business reasons to be governed by the GLP, Corus should not be permitted now to obtain relief from provisions in the policy it may not like.

The PNI Expenditure: *more than 5%*

17. In BRP 2010-167, the Commission determined that, based on historical drama expenditures alone, each broadcaster group would be required to spend *at least* 5% of gross revenues on PNI over the licence term. However, the Commission advised that it would finalize a PNI spending level at licence renewal once it had received and analysed each group's historical spending on other PNI programming (long-form documentaries and awards shows).
18. As the 5% figure represents the broadcaster groups' average historical drama spending only, inclusion of spending for other PNI programming will cause that figure to increase. The only question is, *by how much?*
19. Unfortunately, and despite our best efforts, the CMPA has been unable to date to find within the broadcasters' applications or on the public record financial information that would provide a clear picture as to the actual historical spending on all PNI, i.e. inclusive of all long-form documentaries and awards shows as well as drama. However, given just the number of Canadian long-form documentaries historically produced⁹, the CMPA is confident that a significant increase to the 5% drama-based PNI CPE figure is fully justified.
20. At a minimum, the 5% figure is clearly much too low. If accepted, it would mean that, going forward, the same proportion of spending historically allocated to drama alone would be allocated three ways: to drama as well as to long-form documentaries as well as to awards shows. The result would be that less money would go to each type of programming, and overall spending on these program categories would drop.
21. The CMPA notes that CTV, Shaw and Corus have all indicated their willingness to accept a 5% PNI CPE obligation. As argued above with respect to the group CPE level, however, the CMPA submits that, in determining that the PNI CPE for each group

⁹ See for example, the long list of CTF/CMF-funded documentaries, available at <http://search.cmf-fmc.ca/cgi-bin/ts.pl?index=403798&lang=English&psel=ENG&picocaller=&picocaller0=FRANCAIS&picocaller1=search&picocaller2=French&picocaller3=FR&picocaller4=%252Ffr&picocaller5=ENGLISH&picocaller6=ENG&picocaller7=recherche&picocaller8=English&query=documentary>.

should be “at least 5%”, the CRTC clearly contemplated that 5% would serve as the floor for each of the broadcasters participating in the group licence renewal process, not the ceiling. The CMPA is confident that, historically, CTV, Shaw and Corus have each spent significantly more than 5% of their gross revenues on PNI, meaning a 5% PNI CPE for them would lead to large spending *reductions* in the PNI programming categories.

22. The CMPA notes that Rogers has argued that, for various reasons, including its programming focus and mix of assets, it could not even meet the minimal 5% PNI CPE over the next licence term. The CMPA submits that the Commission should not grant Rogers’ the relief it seeks. As noted above with respect to the minimal group CPE, the Commission based its assessment of the appropriate minimum PNI CPE on its analysis of the historical expenditures for CTV, Shaw and Rogers, taken together. In doing so, it offered no suggestion that the results of any one of those companies justified a PNI CPE lower than 5%.
23. Like the conventional television operations of the other broadcaster groups, Rogers’ CITY-TV stations are licensed to offer general interest programming and thus they should not be permitted to escape reasonable PNI obligations.
24. Accordingly, the CMPA submits that Rogers’ PNI CPE obligation for the new licence term should be at least 5%. Even if the Commission were to find that Rogers is deserving of some level of relief in this respect, the CMPA submits that Rogers should still be required to ramp up to reach the minimum 5% level by the end of the licence term.
25. If anything, given that, in BRP 2010-167, the Commission re-iterated the need to support the creation of Canadian scripted drama and documentaries, a way should be found to ensure the broadcaster groups inject *more* funding into PNI - and certainly not less - than they have spent in the past.

Canadian Content Exhibition Requirements

26. While the GLP shifts the regulatory focus from program exhibition to program creation, the Commission has not indicated any intention to abandon or substantially relax any broadcaster’s current Canadian content exhibition requirements.
27. Given that, under the GLP, broadcasters will have substantial flexibility to allocate their CPE obligations within their broadcast group, Canadian content exhibition obligations will become the primary vehicle for ensuring Canadian viewers will be able to watch Canadian programs on the programming service of their choice. Put another way, Canadian content exhibition requirements will exercise discipline on the manner in which broadcasters will exploit their new spending flexibility. As long as a

broadcaster must schedule Canadian programs on a particular service, it will have to spend money on that service to acquire those programs.

28. The CMPA notes that, in originally proposing a group-based licensing model¹⁰, the Commission sought comments on whether, with a view to harmonizing the rules governing services in a group-based framework and to provide greater regulatory flexibility, it should impose group-based exhibition requirements that would be applied across the services owned by one ownership group.
29. In BRP 2010-167, however, the Commission rejected this earlier proposal. Instead, it chose only to reduce (by 5%) the yearly exhibition rule for conventional television in recognition of “the importance of providing maximum regulatory flexibility while ensuring the availability of Canadian programming during times when most Canadians are watching television”¹¹ (i.e. the evening broadcast period). Otherwise, the Commission concurred with the position of most parties, including most broadcasters, that exhibition requirements for specialty services should be tailored to reflect the character of each service.
30. Accordingly, in establishing the GLP, the Commission specifically rejected the notion of providing Canadian content “parity” amongst specialty services or between those services and conventional television services. It follows therefore that the Commission should deny any requests for such parity advanced by broadcasters in this group licence renewal process.
31. For the same reason, the Commission should resist efforts by the broadcaster groups to reduce any of their Canadian content exhibition levels.

The Requirements Respecting Independently-Produced Programs

32. The requirements established in the GLP respecting independently-produced programs are two-fold:
 - At least 75% of PNI spending is be allocated to independently-produced programs; and
 - Individual services are to retain their specific requirements relating to independent productions.

¹⁰ See Broadcasting Notice of Consultation CRTC 2009-411, <http://www.crtc.gc.ca/eng/archive/2009/2009-411.htm>.

¹¹ *Ibid.*, above note 2, par. 64.

33. Under the GLP, the broadcaster groups are also expected to commission programs of national interest from all regions of Canada, and to engage in levels of production activity that are commensurate with their presence in their respective markets.
34. In BRP 2010-167, the Commission listed some of the initiatives it has adopted over the years to help meet the *Broadcasting Act* objective that “the programming provided by the Canadian broadcasting system should [...] include a significant contribution from the Canadian production sector.”¹²
35. In considering how to ensure its new GLP will also contribute to meeting this policy objective, the Commission identified the need to strike a balance “between supporting the independent production sector, ensuring a diversity of creative voices, and providing broadcasters with the flexibility to acquire the rights to programming that they broadcast.”¹³ The two independent production obligations noted above, *taken together*, constitute the Commission’s chosen method for achieving this balance in its GLP.
36. The CMPA acknowledges and appreciates the fact that none of the broadcaster groups has taken issue with the obligation in the GLP to allocate at least 75% of their PNI spending to independently-produced programs.
37. However, the CMPA strongly opposes any attempts by the broadcaster groups to amend the GLP in order to relieve them of any of the current requirements in their individual licences relating to independent productions. Contrary to the broadcasters’ arguments, the spending obligation will not in itself be sufficient to achieve the Commission’s objectives for the GLP. The GLP reflects the Commission’s clear view that both the generally-imposed spending obligation for independent productions *and* the retention of individual licensee obligations are necessary to achieve the desired balance between ensuring a diversity of voices and giving broadcasters programming flexibility.
38. As has always been the case¹⁴, the defined role of specialty services will continue to be to add diversity in the Canadian broadcasting system by targeting specific and narrow niches, whether they be a specific programming genre or target audience. The Commission has historically imposed obligations on individual specialty licensees respecting the exhibition of and/or spending on independently-produced programs specifically to support this diversity of voices goal.¹⁵ Such individually-imposed

¹² *Broadcasting Act*, section 3(i)(v).

¹³ *Ibid.*, above note 2, par. 90.

¹⁴ See, for example, Broadcasting Decision CRTC 2008-251, in which the *Commission denied Canada HD Network’s application for a Category 2 specialty licence*: <http://www.crtc.gc.ca/eng/archive/2008/db2008-251.htm>.

¹⁵ Because circumstances change, the Commission has also considered it reasonable to impose such obligations on licensees whether or not they are related to any production company: Broadcasting Public Notice CRTC 2004-

obligations will continue to be important for promoting a diversity of voices in the new broadcasting environment. In fact, given the new and substantial spending and programming flexibility which broadcasters will have under the GLP and the discretionary services framework, these individual obligations respecting independently-produced programming will actually be even more important for diversity in the system going forward.

39. Accordingly, the CMPA submits the Commission should reject the broadcasters' attempts to amend the GLP by relieving them of any obligations currently in their individual licences relating to independent production.

An Orderly Transition to the New Regime

40. The CMPA appreciates that the broadcasters will benefit enormously as a result of the new GLP and the spending and programming flexibility it provides them to adapt to changing circumstances and audience tastes and demands. Nevertheless, as Shaw has recognized, the framework under the GLP is "untested and new to the system" and it will therefore take some time not only for broadcasters but also for their partners in the system to acclimatize to the workings and benefits of the new regime.¹⁶ Similarly, Corus has identified the need for the Commission to provide "an appropriate transition from the current regulatory framework to the new group-based framework."¹⁷
41. The CMPA agrees with the broadcasters that the system and stakeholders need a reasonable opportunity to transition from the old regime to the new one.
42. For example, current funding mechanisms such as the CMF and various independent production funds have historically operated based on the notion that broadcasters will order a certain amount of programs in certain genres in a given year. Independent producers have also built and operate their businesses to reflect and respond to these general practices and patterns of broadcaster behavior. With the new GLP and its attendant flexibility being fully implemented in the first year of the new licence terms, however, this behavior could change overnight.
43. The CMPA is also concerned that, by immediately granting broadcasters such an extensive degree of spending and programming flexibility, the GLP could create unintended consequences for the Canadian broadcasting system, and jeopardize the future for various categories of programming that have become Canadian and international success stories. In this respect, the CMPA fears the immediate

2, Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services, <http://www.crtc.gc.ca/eng/archive/2004/pb2004-2.htm>.

¹⁶ Shaw Application, response to Question B.1 (at page 5).

¹⁷ Corus Supplementary Brief, p. 18.

ghettoization of Canadian programming that could result as a consequence of the broadcasters' sudden ability to shift their entire CPE away from certain services, with Canadian programs potentially being "dumped" onto services that may have smaller audiences or be in less competitive genres.

44. The CMPA is also concerned that, given their new spending and programming flexibility, broadcasters may begin right away to substantially reduce or even eliminate programs which serve an important public policy function but which the market alone may not support, such as children's programming.
45. While supportive of the Commission's new GLP, the CMPA submits the above-noted concerns justify a phasing in of the broadcasters' new spending flexibility over the course of the next licence period. Specifically, the CMPA submits that specialty services and conventional television stations should be accorded the same spending flexibility in the first year of the new licence term, such that all qualifying licensees within a group would be permitted to attribute up to 25% of their required CPE to other qualifying services within the same group. Under this proposal, the 25% limit would remain for conventional television stations through the remainder of the licence term, as the GLP requires; however, the limit would gradually increase for specialty services: to 50% in year 2; then to 75% in year 3; and then to 100% in year 4 (and year 5).
46. Although this phased-in approach may not eliminate unintended consequences for the system arising from the new GLP, it should help to mitigate any damage by allowing independent producers and other stakeholders a reasonable opportunity to adjust their business models to the new regime and to the manner in which broadcasters will change their buying and scheduling practices.
47. The CMPA's phased-in proposal is entirely consistent with the Commission's goal of providing broadcasters the flexibility to adjust to changing circumstances: it would simply allow other stakeholders to adjust, too.

Pay Television should be Excluded from the Group Licensing Policy

48. As Corus has recognized, the Commission "did not specifically address the issue of pay services in the context of RP 2010-167."¹⁸ Given the unique and critical role Pay TV services play in financing and broadcasting Canadian feature films, the CMPA recommends that the Commission exclude Corus's Pay TV services, Movie Central and Encore Avenue, from the GLP and from the upcoming group licence renewal process.¹⁹

¹⁸ Corus Supplementary Brief, p. 24.

¹⁹ Subject to the CMPA's other comments in this submission, the GLP and the group licencing process could still apply to Corus's other services.

Otherwise, the CMPA fears the potentially devastating erosion of historical Pay TV support for Canadian feature films and the offloading of needed spending on this category to other categories of programming on other services.

49. The CMPA has long sought to have the Commission recognize the integral role which Pay TV services play in the patchwork of Canadian independent feature film financing. The importance of this role cannot be overstated. The 2009 study conducted by Peter Grant and Michel Houle for Telefilm Canada found that 92% of the television money that went into the financing of Canadian feature films supported by the Canadian Feature Film Fund came from Pay television. Only 8% came from conventional and specialty channels in English Canada.
50. There are currently three English-language Canadian Pay TV licensees, Corus, Astral and Allarcom. Corus has sought to have all its English-language services, including its Pay TV services Movie Central and Encore Avenue, addressed in the current group licence renewal process. Movie Central's current CPE is 31%. If subject to the GLP, however, Corus would be granted the flexibility to allocate up to 100% of this CPE to other services within its group, meaning it could operate so as to make the effective CPE for Movie Central substantially less than 31%. If Corus is thus able to drop Movie Central's effective CPE in this way, the CMPA expects Astral and Allarcom to seek similar treatment with respect to their English-language Pay TV CPEs (currently at 32%).
51. The CMPA acknowledges Movie Central's historical support for Canadian feature films as well as for original Canadian pay drama series. As it points out in its brief, Corus has historically licensed over 65 Canadian feature films per year, including many award-winning theatrical feature films.²⁰
52. However, based on 2009 financial summaries filed with the CRTC, reducing the CPEs for the first-run English-language Pay TV services²¹ even just to 30% of revenue would have resulted in \$3,702,122 less being spent on Canadian programming in 2009 alone. The net result over a five-year licence term would be a loss of at least \$18.5 million from the Pay TV sector²², with at least half of that reduction coming from Canadian drama (given the services' conditions of licence respecting drama) and probably most of it coming from Canadian feature films in light of Pay TV's unique nature of service.
53. Moreover, given the PNI spending flexibility under the GLP, it will be possible, at least in the case of Corus's Movie Central, to shift a significant portion of historical expenditures on Canadian feature films to other forms of PNI typically broadcast on

²⁰ Corus Supplementary Brief, p. 7.

²¹ Not including Encore Avenue and Moviepix.

²² Assuming subscriber growth was to flatten out totally, which seems unlikely given Pay TV's historical patterns.

other services. Such a shift would come at the expense of the most difficult to finance component of PNI, which has little support outside of Pay TV.

54. Further adding to the CMPA's concerns in this area is Corus's request to eliminate the rule requiring Movie Central to spend 50% of its CPE on drama, while maintaining the 50% of airtime requirement. In other words, it seeks the flexibility to spend less money on drama to fill the same number of programming hours. This supports the CMPA's fear that Corus hopes to exploit the spending flexibility inherent in the GLP to reduce the substantial role that the Commission has required Pay TV to play in ensuring financing and a TV window for Canadian feature films.

Other Matters

Terms of Trade

55. As both CTV and the CMPA indicated during the Commission's recent hearing to consider BCE's proposed acquisition of CTV, Terms of Trade negotiations have resumed between the CMPA and CTV, Rogers and Shaw Media, with Astral and Corus also now having joined as parties to the negotiations.
56. In order to focus our collective efforts on the negotiations, all of the parties have agreed to refrain from making submissions to the Commission regarding Terms of Trade at this time. Instead, the parties have agreed to work together to determine a future date to make final submissions to the Commission (if necessary). Accordingly, the CMPA proposes to file the CMPA's final Terms of Trade submission(s) on the date as agreed to by the parties, unless the Commission determines that it is preferable to impose its own deadline for the conclusion of negotiations and the filing of final submissions on this matter.

10% Underspend/Overspend

57. All of the broadcaster groups request the flexibility to overspend or underspend their CPE and PNI requirements by 10% each year provided that any underexpenditures are expended in the next year of the licence term.
58. The CMPA is not opposed to this request, provided that the Commission ensures that the requested flexibility is not abused. For example, the broadcasters should not be allowed to transfer any expenditure requirements remaining in their fifth year into a supplementary or extended licence term as may be granted, for example, via an administrative approval.

Conclusion

59. The CMPA and other stakeholders in the Canadian broadcasting system have been waiting for this licence renewal process for many years. It is a process that has been long in the making, having been preceded not only by a number of on-going administrative renewals for many of the services affected, but also by a series of extensive CRTC policy proceedings covering almost all - if not all - aspects of the Canadian broadcasting system. Thus the GLP, which provides the framework for this current proceeding, represents both the culmination of all these other regulatory activities and a comprehensive and deliberate response to the technical, economic and social developments that have impacted the Canadian broadcasting system since the last major renewal process for conventional television licensees back in 2000.
60. As CTV correctly observed, “[t]he new regulatory framework outlined in RP 2010-167 was designed to provide licensees with the necessary tools to respond *no matter how the Canadian broadcasting system may evolve*.”²³ Therefore the Commission should reject attempts by any of the broadcasters to amend or manipulate the GLP in a manner that would water down its obligations, or to relax its application, based on arguments about their future challenges. Those arguments have already been made, have already been accepted and have already been fully incorporated in the GLP.
61. The GLP correctly characterizes a group CPE of 30% and a PNI CPE of 5% as *minimum* levels. Unfortunately, however, the history of the Canadian broadcasting system is such that broadcasters typically treat “minimum” regulatory obligations as maximums, in particular when it comes to spending on domestic content. The CMPA therefore urges the Commission, in confirming the minimum CPE obligations applicable to the broadcaster groups, to not allow those obligations to slip. While the CMPA shares the Commission’s desire to protect historical expenditure levels against erosion, the overall objective of the policy and its implementation in this proceeding should be to *maximize* the broadcasters’ contributions to Canadian programming going forward.
62. In exchange for providing broadcasters with an unprecedented amount of flexibility to meet their future challenges, the GLP retains a small number of regulatory obligations that remain critical for ensuring the continued support for Canadian programming in the broadcasting system. In the course of considering and ruling on the numerous renewal applications before it, the CMPA urges the Commission not to lose sight of the significant challenges which those who make Canadian programming also face. The Commission’s application of the new GLP should help broadcasters to succeed; it must also help Canadian programming to succeed, too.

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²³ CTV Application, response to Question D.4.b (page 40), emphasis added.