



February 26, 2013

Mr. John Traversy  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Mr. Traversy:

**Re: Broadcasting Notice of Consultation CRTC 2013-19: Applications for mandatory distribution on cable and satellite distribution systems pursuant to section 9(1)(h) of the *Broadcasting Act* and applications for the licence renewal of independent conventional, pay and specialty television services**

1. These are the comments of the Canadian Media Production Association (“the CMPA”)<sup>1</sup> respecting certain of the applications announced in Broadcasting Notice of Consultation CRTC 2013-19.
2. The CMPA wishes to appear at the public hearing scheduled to commence 23 April 2013 to expand upon the positions advanced herein.

#### **EXECUTIVE SUMMARY**

3. In this submission, the CMPA first provides general comments which are intended to apply to all applications in respect of English-language programming services.
4. Second, we provide specific comments with respect to the applications for the following services: Starlight: The Canadian Movie Channel; APTN; Superchannel; and Blue Ant’s Travel + Escape and Bold.

#### **General Comments - Balancing Canadian Content Support Obligations**

5. A number of the applicants who currently operate licensed specialty or pay TV services seek reductions in their Canadian programming expenditure (CPE) and/or Canadian programming exhibition obligations on the grounds that, in 2011, the Commission granted similar reductions to programming services owned by the large broadcaster groups.

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<sup>1</sup> 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 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.

6. In establishing its group-based approach, however, the Commission's intent was to ensure that each company still maintained its historical expenditures on Canadian programming. It was not the Commission's intent to reduce those expenditures but rather to avoid imposing *additional* obligations going forward.
7. Moreover, the Commission also stated that it did not contemplate lower Canadian exhibition requirements for specialty services, or harmonizing all of the obligations for television services.
8. To better achieve the objectives of the *Broadcasting Act*, the Commission also balanced this regulatory relief for the broadcasters by adding or maintaining the following obligations:
  - Adherence to a Terms of Trade Agreement;
  - Maintenance of historical spending levels on programs of national interest (PNI);
  - 75% of PNI spending is to be allocated to independently-produced programming;
  - Maintenance of existing conditions of licence or expectations respecting the volume of, or expenditures on, independently-produced programming.
9. Unfortunately, it would appear that the applicants in this proceeding have, for the most part, little interest in accepting these obligations alongside the regulatory relief they seek.
10. The Commission should reject any applicant's argument that the group-based licensing approach for the largest broadcasters justifies reductions in that applicant's Canadian programming support obligations.
11. Further, the CMPA submits that, should the Commission grant any current applicant the benefits associated with the group-based licensing approach, it must also, to the greatest extent possible, impose the associated obligations listed above – starting with requiring that all such applicants (including those specifically addressed below) enter into a terms of trade agreement with independent producers. Similarly, any new licence granted in this proceeding should be subject to a condition requiring adherence to a terms of trade agreement.

### **Comments on Specific Individual Applications**

#### **Starlight: The Canadian Movie Channel (Starlight)**

12. The CMPA supports this application.
13. The Starlight service will make an important and valuable contribution to the future of Canadian feature films and to the Canadian broadcasting system by establishing a new funding source and by giving Canadians a new opportunity to view Canadian-made films which tell their stories and reflect their values and their outlook on the world.

14. Although not clear from the application, we understand and appreciate that Starlight will also use its resources to inject substantial and much-needed funding into licensing new films for broadcast which are financed through traditional means (e.g. with help from Telefilm); indeed, we see this traditional broadcast licensing approach for new films as the critical third leg of the Starlight film support model, as important as if not more so than the Starlight Feature Film Fund and the licensing of library material.
15. Thus we look to Starlight to allocate to the licensing of new Canadian films over the course of its licence term an amount at least as equal to the amount it has proposed in its business model to allocate to the licensing of library content, which we calculate to represent an average of at least \$6.5 million per year. We also want to work with Starlight to ensure the Starlight Fund makes the most positive contribution possible to the creation and presentation of new Canadian feature films.

### **Aboriginal Peoples Television Network (APTN)**

16. The CMPA **supports** this application, subject to the following comments.
17. The CMPA submits that APTN has demonstrated by its performance over its last licence term and through its proposals for the next term that it has met, and will continue to meet, the criteria the Commission has established for s. 9(1)(h) services.
18. At the same time, however, we have been made aware of concerns that APTN may be relying on its affiliated production company to meet part of its independent production obligation, and that it may not be giving proper priority, either with respect to exhibition or to expenditures, to programs produced by Aboriginal producers.
19. Accordingly, we call upon APTN to respond completely as possible to these concerns and request that the Commission pursue these matters in depth with APTN at the upcoming public hearing. We also ask the Commission to require APTN to submit a report annually which provides details both on how it has met its independent production obligation and on how it has given priority to programs produced by Aboriginal producers.

### **Superchannel**

20. Many of the obligations Superchannel now seeks relief from are ones it had volunteered as a fundamental part of its licence application in order to convince the Commission of the merits of its proposal relative to others in a competitive licensing process. Accordingly, approving the present Superchannel application would raise serious questions of fairness with respect to the other applicants whom, in 2006, may have promised more by way of supporting Canadian programming than Superchannel is now offering. We submit the Commission should fully examine this issue with the licensee at the upcoming public hearing.

## Blue Ant

21. The CMPA strongly opposes Blue Ant's request to be relieved of all its obligations with respect to independently-produced programming. Blue Ant's argument that it is an "independent producer" is simply wrong: an "independent" producer is one that is *independent of the broadcaster*. The fact that Blue Ant is an independent *broadcaster* relative to the vertically integrated companies does not change the fact that it is still a broadcaster and a gatekeeper with respect to the growing number of channels it controls. The Commission has established policies and safeguards for independent production specifically to ensure independent voices have equitable access to licensed broadcasting services like those which Blue Ant owns and operates.
22. None of Blue Ant's arguments provides a credible rationale for granting it special status respecting independently-produced programming beyond what the Commission has already granted it.

## SUBMISSION

23. In this submission, the CMPA first provides general comments which, given the fact we represent independent producers of English-language programming, are intended to apply to all applications in respect of English-language programming services.
24. Second, we provide specific comments with respect to the following applications:
  - 8094039 Canada Corp. (Starlight: The Canadian Movie Channel)  
*Application 2012-0714-2 (Item 8)*
  - Aboriginal Peoples Television Network Incorporated (APTN)  
*Application 2012-0993-2 (Item 17)*
  - Allarco Entertainment (2008) Inc., the general partner, as well as limited partner, with C.R.A. Investments Ltd., (the limited partners), carrying on business as Allarco Entertainment Limited Partnership (Superchannel)  
*Application 2012-1037-7 (Item 23)*
  - Blue Ant Media Solutions Inc. and 8182493 Canada Inc., partners in a general partnership carrying on business as Blue Ant Media Partnership (Blue Ant)
    - Travel + Escape  
*Application 2012-1198-7 (Item 32)*
    - Bold  
*Application 2012-1537-7 (item 33)*

## General Comments - Balancing Canadian Content Support Obligations

25. A number of the applicants who currently operate licensed specialty or pay TV services seek reductions in their Canadian programming expenditure (CPE) and/or Canadian programming exhibition obligations. They generally seek to justify these requests on the grounds that, in 2011, the Commission granted increased flexibility and, in some cases, CPE or exhibition reductions, to programming services owned by the large broadcaster groups.
26. The CMPA acknowledges that the Commission adopted a new group-based licensing approach for the largest broadcasters and that, as a component of that approach, it allowed certain services to reduce some of their individual Canadian programming support obligations. The CMPA also accepts that the Commission should generally not place more onerous regulatory obligations on services owned by smaller, independent broadcasters than it does on those owned by the large broadcaster groups.
27. In establishing its group-based approach, however, the Commission stated that the flexibility now granted to the large broadcasters was intended 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.”<sup>2</sup>
28. The Commission was also clear that its intent was to ensure that each company still maintained its historical expenditures on Canadian programming. It was not the Commission’s intent to reduce those expenditures but rather to avoid imposing *additional* obligations going forward.<sup>3</sup>
29. Thus, while the Commission, in implementing its new approach<sup>4</sup>, generally accepted requests for CPE reductions for individual services<sup>5</sup>, it did so with the clear understanding and intent that there would be no reductions in each parent company’s respective expenditure level overall.
30. Moreover, the Commission stated that “[w]hile the group-based policy does emphasize greater flexibility for individual services and focuses on spending rather than exhibition, the Commission notes that it did not contemplate lower Canadian exhibition requirements for specialty services, or harmonizing all of the obligations for television services.”<sup>6</sup> Accordingly, with the exception of the requests from a couple of historical “outliers”<sup>7</sup>, the Commission denied all requests to reduce current exhibition levels.

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<sup>2</sup> Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services*, <http://www.crtc.gc.ca/eng/archive/2010/2010-167.htm>, at par. 27.

<sup>3</sup> *Ibid*, at par. 50.

<sup>4</sup> Broadcasting Decision CRTC 2011-441, *Group-based licence renewals for English-language television groups - Introductory decision*, <http://www.crtc.gc.ca/eng/archive/2011/2011-441.htm>.

<sup>5</sup> *Ibid*, at par. 30.

<sup>6</sup> *Ibid*, at par 111.

<sup>7</sup> Slice and BNN.

31. As noted above, the new flexibility and any CPE reductions the Commission granted the large broadcasters in 2011 represented only one component of its new licensing approach. In order to better achieve the objectives of the *Broadcasting Act*, the Commission also balanced this regulatory relief for the broadcasters by adding certain new obligations and maintaining others. Specifically, any Canadian content support reductions were balanced with the following obligations:
- Adherence to a Terms of Trade Agreement;
  - Maintenance of historical spending levels on programs of national interest (PNI);
  - 75% of PNI spending is to be allocated to independently-produced programming;
  - Maintenance of existing conditions of licence or expectations respecting the volume of, or expenditures on, independently-produced programming.
32. Unfortunately, it would appear that the applicants in this proceeding have, for the most part, little interest in accepting these obligations alongside the regulatory relief they seek.
33. In light of the above, the CMPA submits that the Commission should reject any applicant's argument that the group-based licensing approach for the largest broadcasters justifies reductions in that applicant's Canadian programming support obligations. As noted, it has *not* become the Commission's policy or practice simply to reduce these obligations; to the contrary, the Commission has confirmed that it is not prepared to accept reductions in a broadcasting company's total CPE or, generally, in an individual service's Canadian programming exhibition levels.
34. Further, the CMPA submits that, should the Commission grant any current applicants the benefits associated with the group-based licensing approach, it must also, to the greatest extent possible, impose the associated obligations listed above – starting with requiring that all such applicants (including those specifically addressed below) enter into a terms of trade agreement with independent producers.

#### **Terms of Trade**

35. As the Commission reinforced when it renewed the licences of the large English-language broadcaster groups, terms of trade agreements are in the best interest of the Canadian broadcasting system because they ensure stability and clarity for producers and broadcasters<sup>8</sup>; this is no less the case for independent broadcasters than it is for large integrated ones.
36. We therefore call upon the Commission to make adherence to an appropriate Terms of Trade Agreement part of any new licence issued, and a condition precedent to contemplating any reductions to existing regulatory obligations as part of any licence renewal.

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<sup>8</sup> *Ibid*, above note 4, at par. 119.

## Other Obligations Respecting Independently-produced Programs

37. In addition, as with the large broadcasters, any service that historically broadcast programs of national interest should be required to spend at least the same amount on PNI going forward, and allocate at least 75% of that amount to independently-produced PNI.
38. Finally, any service subject to any existing requirements relating to independent production should remain so, as is the case with the large broadcasters. This means, for example, that **Travel + Escape, Bold, ONE, iChannel** and **OUTtv** should continue to be subject to the condition of licence, imposed when they were first licensed in 2000, which requires that “no less than 25% of all Canadian programs broadcast by the licensee, other than news, sports, and current affairs programming, shall be produced by non-related production companies.”<sup>9</sup>
39. The Commission reinforced the importance of this type of on-going obligation when it renewed the large broadcasters’ licences, stating that “the individual obligations imposed on specialty services are an important factor in supporting the independent production sector and...will contribute to the ongoing support of independently produced content in categories other than drama, documentaries and award shows.”<sup>10</sup>

## Comments on Specific Individual Applications

### Starlight: The Canadian Movie Channel (Starlight)

40. The CMPA **supports** this application.
41. Feature films have historically been an important and prominent ingredient in the diverse mix of programming in the Canadian broadcasting system. In a number of recent submissions, however, the CMPA has repeatedly highlighted that the Canadian feature film industry is facing a funding crisis because broadcasters in general no longer support Canadian feature films as they once did.<sup>11</sup>

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<sup>9</sup> See Public Notice CRTRC 2000-171, *Introductory statement - Licensing of new digital pay and specialty services*, <http://www.crtc.gc.ca/eng/archive/2000/PB2000-171.htm>.

<sup>10</sup> *Ibid*, above note 4, at par. 101.

<sup>11</sup> See, for example, *Canadian Television Broadcasters’ Financial Participation in the Production of English-language Theatrical Films Supported by Telefilm Canada Under the Main Program of the Canada Feature Film Fund*, September 2011, and *Examination of the Levels of Broadcast for Canadian Theatrical Films*, 9 May 2011, filed respectively as Appendices A and B to the CMPA’s submission in response to Broadcasting Notice of Consultation CRTC 2011-525 (Astral Renewal), available at <http://www.cmpa.ca/sites/default/files/documents/industry-information/studies/2011.09.BroadcastersSupportToEnglishTFCFeatureFilms%28FINAL%29.pdf>, and [http://www.cmpa.ca/sites/default/files/documents/industry-information/studies/2011-05-09-Strategic\\_Inc-Theatrical\\_Release\\_Research\\_Report\\_final\\_21.pdf](http://www.cmpa.ca/sites/default/files/documents/industry-information/studies/2011-05-09-Strategic_Inc-Theatrical_Release_Research_Report_final_21.pdf).

42. As part of its application, Starlight provided data from its own research into broadcaster scheduling practices which shows that Canadian feature films have now become – in Starlight’s words – “broadcast orphans in Canada.”<sup>12</sup> This unfortunate trend is a primary reason why the Starlight service is now needed. While it won’t in itself solve the current crisis – and should in no way lessen the role which the CRTC should require Canadian VOD providers, pay TV operators and other broadcasters to play to support Canadian feature films – the Starlight service will make an important and valuable contribution to the future of Canadian feature films and to the Canadian broadcasting system by establishing a new funding source and by giving Canadians a new opportunity to view Canadian-made films which tell their stories and reflect their values and their outlook on the world.
43. The diminishing support from Canadian broadcasters for Canadian feature films is having a real impact on the quality and availability of those films; approval of the Starlight application will represent an important step in helping to stop and then reverse what we fear may otherwise become a downward spiral for Canadian films.
44. The CMPA continues to call upon the Commission to address the critical issue of broadcaster support for feature films. In this respect, we highlight the fact that other countries recognize the important role their domestic broadcasting industries must play in ensuring domestic feature films are made and shown. For example, last year the UK government devoted a chapter of a report on its film industry specifically to broadcasters and feature films. The report, entitled *A Future for British Film*<sup>13</sup>, offered various recommendations to further the government’s objective of ensuring “that all major broadcasters engage with and support British film in a significant way on an ongoing basis” and that UK broadcasters “show a good proportion of British films, including recent British films, as part of the overall mix on their TV channels, and...invest in acquisition and production.”<sup>14</sup>
45. The UK report also made special note of the mechanisms other countries employ to ensure their broadcasters support their respective domestic film industries:

In France, broadcasters have long been required by law to invest directly a percentage of their annual revenues in film, resulting in an investment totalling over £420m in French film in 2010. In Spain a new audiovisual law imposes similar obligations on broadcasters. In Germany, public and private broadcasters are required to contribute percentages of their advertising turnover to the government-backed Federal Film Agency (as happens also in

<sup>12</sup> Starlight Supplementary Brief, pages 6 - 8.

<sup>13</sup> 'A Future For British Film: It begins with the audience': Report on the Film Policy Review Survey [http://www.culture.gov.uk/images/publications/DCMS\\_film\\_policy\\_review\\_report-2012.pdf](http://www.culture.gov.uk/images/publications/DCMS_film_policy_review_report-2012.pdf). See Chapter 5: Television Broadcasters and British Film, pp 55-58.

<sup>14</sup> *Ibid*, p. 55.

Sweden, Denmark and Austria), and public broadcasters are required to back the appropriate regional film fund. In Italy public service broadcasters and the main private broadcasters are required to support film according to Government quotas.<sup>15</sup>

46. The CMPA has met several times with representatives of the proposed Starlight service since the Commission published their application. It is clear that our members and the Starlight principals share the same concerns about the future of Canadian feature films absent greater broadcaster support. We also share the same strong belief that Canadian films continue to represent a fundamental component of the Canadian broadcasting system and that the Commission has a critical role to play in ensuring Canadians benefit from widespread access to them.
47. The CMPA has also reviewed the Commission's criteria for s. 9(1)(h) status<sup>16</sup> and we fully agree with Starlight's arguments as to why it qualifies for mandatory digital basic carriage. In particular, we note that Starlight's proposed 70% CPE and 100% exhibition levels far exceed the obligations of existing Category A services, and its focus on Canadian feature films means that its schedule will be made up almost entirely of a genre of PNI which is otherwise largely unrepresented in our broadcasting system. Moreover, its contributions flowing from its proposed Starlight Feature Film Fund and the licensing of new films (see below) represent exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures.
48. We have also reviewed Starlight's financial projections and believe that its proposed wholesale rate is reasonable and appropriate given the nature of the service it proposes.
49. If licensed as a s. 9(1)(h) service at the proposed wholesale rate, Starlight will achieve the subscriber penetration and generate the necessary level of revenues to make a real and substantive contribution to the creation and presentation of a special and unique form of Canadian audio-visual story-telling - Canadian feature films.
50. The CMPA fully appreciates that Canadian consumers and decision-makers increasingly have the desire and the tools to benefit from and promote greater programming choices. We believe that, by supporting the creation of new Canadian films from a diverse range of film-makers from across the country and by making both those new films and existing films more widely available to more Canadians than ever before, Starlight will contribute significantly and positively to programming choice.
51. We are particularly intrigued by Starlight's plan to establish its own internal fund, the Starlight Feature Film Fund, which would provide full financing each year for a slate of

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<sup>15</sup> *Ibid*, p. 52. Footnotes omitted.

<sup>16</sup> Broadcasting Regulatory Policy CRTC 2010-629, <http://www.crtc.gc.ca/eng/archive/2010/2010-629.htm>.

new Canadian feature films from unaffiliated producers (i.e. who are not shareholders in the service), including Aboriginal filmmakers, who are emerging or mid-career, and who work in different regions of Canada. We want to work with Starlight to ensure the Fund makes the most positive contribution possible to the creation and presentation of new Canadian feature films.

52. Although not clear from the application, we understand and appreciate that Starlight will also use its resources to inject substantial and much-needed funding into licensing new films for broadcast which are financed through traditional means (e.g. with help from Telefilm); indeed, we see this traditional broadcast licensing approach for new films, including films from Canada's regions and from Aboriginal filmmakers, as the critical third leg of the Starlight film support model, as important as if not more so than the Starlight Feature Film Fund and the licensing of library material.
53. Most Canadian film producers rely on the traditional licensing model to help finance their projects. It is the model that has provided crucial support for creating the kinds of Canadian films which have received unprecedented critical acclaim in recent years and which audiences to Starlight will both demand and deserve from the service in the years ahead.
54. For every dollar invested in a traditional broadcasting licence, producers can typically leverage upwards of three dollars in other financing. For every \$1 million Starlight allocates to licence fees, it could either stimulate the production of 3 - 4 new films or increase the budgets and quality of the final productions. Thus we look to Starlight to allocate to the licensing of new Canadian films over the course of its licence term an amount at least as equal to the amount it has proposed in its business model to allocate to the licensing of library content, which we calculate to represent an average of at least \$6.5 million per year. This would help to complete the financing for up to 20 Canadian feature films each year – an admirable and very achievable objective.
55. We therefore look forward to Starlight committing to this level of traditional broadcast licensing support in its reply to interventions and at the upcoming public hearing.
56. Based on this well-financed three-legged model – the Starlight Fund, the traditional broadcast licensing of new films, and the licensing of library material – we believe that approval of the Starlight application, combined with increased contributions from other broadcasters, will herald a new golden era of Canadian feature films which Canadians will wholeheartedly welcome and strongly support.

### **Terms of Trade**

57. We reiterate our position, as outlined above, that all programming services which license programs produced by independent producers should be obliged to enter into

an appropriate Terms of Trade Agreement. While the business of creating and licensing feature films differs in many respects from that for other forms of content broadcast on television, the CMPA believes that securing an agreement establishing fair and reasonable terms uniquely suited to Starlight's feature film service is both appropriate and possible.

58. We therefore look forward to Starlight confirming its commitment to Terms of Trade in its reply to interventions and at the upcoming public hearing, and call upon the Commission to make adherence to a Terms of Trade Agreement a condition of Starlight's new licence.

### **Aboriginal Peoples Television Network (APTN)**

59. The CMPA **supports** this application, subject to the following comments.
60. The CMPA submits that APTN has demonstrated by its performance over its last licence term and through its proposals for the next term that it has met, and will continue to meet, the criteria the Commission has established for s. 9(1)(h) services. In that respect, the CMPA agrees with the following statement in APTN's application:

With the growing population of Aboriginal Peoples in Canada and especially the rising proportion of youth, it is more important than ever that Aboriginal Peoples see themselves and their experiences and aspirations reflected in mainstream media. It is also more important than ever that the cultural bridge between Aboriginal Peoples and non-Aboriginal Canadians be strengthened.<sup>17</sup>

61. The CMPA also agrees with APTN's observation that "APTN has to grow and embrace change to remain relevant and to fulfill its important mandate."<sup>18</sup>
62. While the CMPA considers that the Commission is in the best position to determine whether APTN's proposed rate increase is reasonable, we submit nevertheless that APTN should be permitted to generate the revenues necessary to continue to meet its mandate while growing and embracing change. This includes revenues necessary for APTN "to play a more prominent role as the lead broadcaster of high-quality Aboriginal programming from a wide range of programming categories suitable for a national network, and competitive with comparable programming offered on other national networks."<sup>19</sup>
63. The CMPA notes that APTN is currently subject to a condition of licence (COL) requiring that a minimum of 80% of programming broadcast by the licensee, other than news, current affairs and sports, be produced by independent production companies not

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<sup>17</sup> APTN Supplementary Brief, p. 2.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, at p. 7.

related to the licensee. We appreciate that APTN seeks to maintain this COL over its next licence term.

64. We also wish to note our support for APTN's commitment to Aboriginal producers as described on its web site. On its "Producers Eligibility" page<sup>20</sup>, APTN states that, in order for proposals for Development or Licensing to be eligible for consideration, the producer must be an Aboriginal person, if an individual, or an Aboriginal production company (which is defined to include a sole proprietorship, a limited company, a co-operative, a partnership, or a not-for-profit organization in which Aboriginal persons have at least fifty one (51%) percent ownership and control; or a joint venture consisting of two (2) or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business, provided that the Aboriginal business(es) has at least fifty-one (51%) percent Aboriginal ownership and control of the joint venture, as verified to the satisfaction of APTN).
65. On that same web page, APTN also states that, while a production company or team requesting an APTN broadcast licence for a second or subsequent window does not have to be an Aboriginal Producer or Aboriginal Production Company, a realistic work plan and evidence for Aboriginal training/mentorship must be provided and some key positions must be held by Aboriginal People(s).
66. At the same time, however, we have been made aware of concerns that, notwithstanding the above-noted web page statements regarding producer eligibility, APTN may not in practice be giving proper priority, either with respect to exhibition or to expenditures, to programs produced by Aboriginal producers.
67. The CMPA firmly believes that, given APTN's mandate, the Commission must require it to give priority to programs produced by Aboriginal producers by obliging it to 1) adhere to its Producers Eligibility rules as described on its web site and reproduced above; and 2) ensure that the majority of its independently-produced programming overall<sup>21</sup> is produced by Aboriginal producers or Aboriginal production companies. Unfortunately, however, we do not have access to enough information about APTN's program practices and schedule or its programming expenditures to fully assess the impact of the concerns we've heard on this matter.
68. We are also aware of concerns that APTN may be relying on its affiliated production company, Animiki See<sup>22</sup>, to meet part of its 80% independent production obligation. Again, however, we unfortunately do not have access to enough information about the relationship of Animiki See and APTN or of APTN's use of Animiki See productions to fully assess the impact of these concerns.

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<sup>20</sup> <http://www.aptn.ca/corporate/producers/eligibility.php>.

<sup>21</sup> Meaning a *minimum* of 51%.

<sup>22</sup> <http://www.animikisee.ca/>.

69. Accordingly, we call upon APTN to respond completely as possible to these concerns respecting Animiki See and priority to Aboriginal producers, and request that the Commission pursue these matters in depth with APTN at the upcoming public hearing.
70. We also ask the Commission to require APTN to submit a report annually which provides details both on how it has met its 80% independent production obligation and on how it has given priority to programs produced by Aboriginal producers. We submit that such a requirement represents a reasonable and appropriate level of accountability given APTN's mandate and special status as a s. 9(1)(h) service.

### **Terms of Trade**

71. Once again, we reiterate our position, as outlined above, that all programming services which license programs produced by independent producers should be obliged to enter into an appropriate Terms of Trade Agreement. In APTN's case, we note and support the fact that the licensee has voluntarily entered into terms of trade negotiations with the Alliance of Aboriginal Media Producers (AAMP). The CMPA is working with AAMP in the negotiations. We submit that APTN should be required to finalize this deal prior to its licence being renewed, and call upon the Commission to make adherence to a Terms of Trade Agreement a condition of APTN's renewed licence.

### **Superchannel**

72. In addition to the generally applicable comments provided above, the CMPA wishes to provide the following specific comment regarding the Superchannel application to renew its licence for the first time since being licensed in 2006.
73. While we note that Superchannel is not alone in this process in seeking reductions to its Canadian content support obligations, we also wish to highlight the fact that many of the obligations Superchannel now seeks relief from are ones it had volunteered as a fundamental part of its licence application in order to convince the Commission of the merits of its proposal relative to others in a competitive licensing process. Moreover, the Commission specifically cited those volunteered support obligations as the basis for choosing to approve the Superchannel application over the others before it.<sup>23</sup>
74. Accordingly, approving the present Superchannel application would raise serious questions of fairness with respect to the other applicants whom, in 2006, may have promised more by way of supporting Canadian programming than Superchannel is now offering. We submit the Commission should fully examine this issue with the licensee at the upcoming public hearing.

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<sup>23</sup> Broadcasting Decision CRTC 2006-193, <http://www.crtc.gc.ca/eng/archive/2006/db2006-193.htm>, pars. 84-86.

## Blue Ant

75. In addition to the generally applicable comments provided above, the CMPA wishes to provide the following specific comments regarding the applications by Blue Ant to renew its licences for the Category A services Travel + Escape and Bold.
76. The CMPA strongly opposes Blue Ant's request to be relieved of all its obligations with respect to independently-produced programming. We call on the Commission to reject outright Blue Ant's request to categorize its in-house programming as "independent programming" such that it would uniquely be permitted to broadcast only programming that it makes itself.
77. Blue Ant's argument that it is an "independent producer" is simply wrong: an "independent" producer is one that is *independent of the broadcaster*. The fact that Blue Ant is an independent *broadcaster* relative to the vertically integrated companies does not change the fact that it is still a broadcaster and a gatekeeper with respect to the growing number of channels it controls. The Commission has established policies and safeguards for independent production specifically to ensure independent voices have equitable access to licensed broadcasting services like those which Blue Ant owns and operates.
78. In these renewal applications, Blue Ant continues its apparently never-ending effort<sup>24</sup> to try to convince the Commission that it alone in the broadcasting system is deserving of special, preferential treatment respecting independently-produced programming because 1) it is operated by people who were once independent producers; and 2) it is small and innovative.
79. None of Blue Ant's arguments provides a credible rationale for granting it special status respecting independently-produced programming beyond what the Commission has already granted it. Blue Ant is a broadcasting licensee and not an independent producer. The fact that, years ago, some of Blue Ant's senior people were independent producers makes it no different than a number of other Canadian programming services, both large and small.
80. Moreover, the fact that producers are involved in the ownership of Blue Ant's licensed broadcasting services *increases* rather than lessens the need for safeguards for independently-produced programming. The Commission has always recognized the importance of separating broadcasters and independent producers. For example, the Commission stated in 2001, when renewing Showcase's licence:

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<sup>24</sup> See Blue Ant's recent applications to purchase Glassbox (Broadcasting Notice of Consultation CRTC 2011-408, <http://www.crtc.gc.ca/eng/archive/2011/2011-408.htm>), High Fidelity (Broadcasting Notice of Consultation CRTC 2012-277, <http://www.crtc.gc.ca/eng/archive/2012/2012-277.htm>) and Bold (Broadcasting Notice of Consultation CRTC 2012-475, <http://www.crtc.gc.ca/eng/archive/2012/2012-475.htm>, Item 15).

The Commission has traditionally considered that participation by program producers in the ownership structure of programming undertakings raises concerns related to program supply and the potential for "gate-keeping" vis-à-vis other producers. The Commission has adopted a range of measures in the case of producer-affiliated programming services, depending on individual circumstances.<sup>25</sup>

81. Also, Blue Ant can hardly claim to be "small". In a series of recent transactions, Blue Ant has built its portfolio to include the *eight* services that are all up for licence renewal in this process. Presumably, this pattern of on-going acquisitions will continue.
82. And Blue Ant is hardly alone in claiming to be innovative. There are many other innovative programming services in the Canadian broadcasting system which accept (and embrace) their obligations respecting independently-produced programming; we would argue in fact that their use of independently-produced programming is what qualifies those other services as "innovative". Innovation includes tapping into the diverse views that come from third-party voices, such as independent producers.
83. It must be recognized that Blue Ant's obligations respecting independently-produced programming are already minimal: it successfully convinced the Commission to grant it the special right to allocate to independently-produced programs only 50% of the benefits obligations arising from its purchase of High Fidelity and Bold (rather than the general standard of 75%)<sup>26</sup>; the COLs currently applicable to its Category A services Travel + Escape and Bold require only that 25% of their Canadian programs (other than news, sports, and current affairs) be produced by non-related production companies<sup>27</sup>; it has no similar obligations for any of its other services; and it broadcasts (or plans to broadcast) very little PNI (so the new standard obligation to allocate 75% of its PNI spending to independently-produced programming will have little financial impact).
84. Given these minimal obligations, Blue Ant should have no difficulty continuing to abide by them. It will still have the flexibility to allocate three-quarters of the Travel + Escape and Bold schedules, and the vast majority of their associated Canadian programming expenditures, to in-house production.
85. Nor could these obligations stifle in any way Blue Ant's ability to innovate or succeed. To the contrary, they will contribute to the breadth and depth of creative ideas presented on the Blue Ant services in a way not possible if the company were allowed

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<sup>25</sup> Decision CRTC 2001-153, <http://www.crtc.gc.ca/eng/archive/2001/DB2001-153.htm>, at par. 15.

<sup>26</sup> It is unclear from its applications whether Blue Ant is also seeking to be relieved of this minimal obligation, notwithstanding that it proposed this favourable allocation of benefits itself.

<sup>27</sup> *Ibid*, above note 9.

to exploit its growing stable of services simply to disseminate its own programming voice.

### Terms of Trade

86. Finally, we again reiterate that all programming services which license programs produced by independent producers should be obliged to enter into an appropriate Terms of Trade Agreement.
87. In Blue Ant's case, we specifically refer the Commission to its statement in its decision approving Blue Ant's purchase of High Fidelity that, "[i]n regard to the issue of terms of trade and the CMPA's request that advisory language regarding terms of trade be included in this decision, the Commission considers that the appropriate forum to address this matter is at the licence renewals for the services, which are currently scheduled to take place prior to 31 August 2013."<sup>28</sup> The CMPA therefore calls on the Commission to follow through on this statement in this process and make adherence to a Terms of Trade Agreement a condition of Blue Ant's renewed licences.

All of which is respectfully submitted.

*original signed by*

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<sup>28</sup> Broadcasting Decision CRTC 2012- 381, <http://www.crtc.gc.ca/eng/archive/2012/2012-381.htm>, at par. 31.