CMPA
Canadian Media
Producers Association
Ottawa | Toronto | Vancouver

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Filed via Intervention/Comment/Answer Form

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

Dear Mr. Doucet:

RE: Blue Ant Television General Partnership's Broadcasting Licence Renewal Application for A.Side (formerly AUX TV); Makeful TV (formerly BITE Television); travel + escape; Cottage Life (formerly Bold); BBC Earth (formerly radX); Love Nature (formerly Oasis HD); HIFI (formerly Treasure HD) (Application no. 2017-0841-3) and SN Channel General Partnership's Broadcasting Licence Renewal Application for Smithsonian Channel (formerly eqhd) (Application no. 2017-0842-1) – Intervention from the Canadian Media Producers Association

Introduction

1. The Canadian Media Producers Association (CMPA) is pleased to provide the following comments with respect to the broadcasting licence renewal applications for Blue Ant Television General Partnership's discretionary services A.Side (formerly AUX TV); Makeful TV (formerly BITE Television); travel + escape; Cottage Life (formerly Bold); BBC Earth (formerly radX); Love Nature (formerly Oasis HD); HIFI (formerly Treasure HD) (Application no. 2017-0841-3) and SN Channel General Partnership's discretionary service Smithsonian Channel (formerly eqhd) (Application no. 2017-0842-1) (hereinafter collectively referred to as "Blue Ant Television" when referring to the Applicants and "Blue Ant Group" when referring to the group-based licence). In the event the Commission announces a public hearing with respect to the above-noted licence renewal applications, the CMPA requests to appear to further elaborate on this intervention.

2. The CMPA is the country's leading member-based advocacy organization for independent producers. We represent hundreds of companies engaged in the development and distribution of English-language content made for television, cinema, and digital media channels. The CMPA works to promote the continued success of the Canadian production sector and to ensure a future for the diverse content made by Canadians for both domestic and international audiences.

3. The CMPA supports the renewal of the modified group-based licence for Blue Ant Television's eight discretionary services, subject to the following comments.

Executive Summary

4. The CMPA supports the renewal of the Blue Ant Group on the condition that the Commission impose conditions of licence (COLs) in accordance with the group's historical levels for Canadian programming expenditures (CPE) and programs of national interest (PNI) expenditures, and requires appropriate independent production expenditures in the new licence term. Specifically, we request that the Commission impose a 30% CPE (either actual or effective for the designated group) because the Blue Ant Group exceeded this amount in the current licence term and it is the Commission's policy to require a CPE of 30% of the previous year's gross revenues for group-based licences. While we are unable to recommend a PNI level for the Blue Ant Group in the new licence term based on a lack of financial data in the licence renewal application, we suggest that the COL relating to PNI should be at least 13.5% of the previous year's gross revenues. We also request that the Commission require that at least 60% of the expenditures related to PNI be made to an independent production company for the acquisition or commission of original, first-run programming. We respectfully submit that these proposals are in line with the group-based licensing framework as originally provided in Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services* (BRP 2010-167) and confirmed in the Broadcasting Regulatory Policy CRTC 2015-86, *Let's Talk TV, The way forward - Creating compelling and diverse Canadian programming* (the "Create Policy") and Broadcasting Regulatory Policy CRTC 2017-148, *Renewal of licences for the television services of large English-language ownership groups - Introductory decision* (BRP 2017-148).

5. As well, the CMPA submits that a public hearing should be called to renew the Blue Ant Group in order to meet the public interest. With the exception of the current round of licence renewal proceedings, the Commission has called public hearings for all group-based licence applications and renewals. A public hearing allows for more meaningful input from the public on issues such as the proposed amendments to independent production COLs for the Blue Ant Group.

6. Finally, the CMPA is also taking the opportunity provided by the licence renewal process to request that the Commission review its standard definition for "independent production company" as well as emphasize the importance of transparent reporting by broadcasters.

Blue Ant Group's CPE and PNI levels should be based on historical expenditures

7. The CMPA submits that the Commission should impose COLs relating to CPE and PNI for the eight services in the Blue Ant Group based on their historical levels in accordance with BRP 2010-167 and the Create Policy.[1] At Blue Ant Television's last licence renewal,[2] the Commission granted approval for a modified group-based licence for the Blue Ant Group and refrained from imposing group CPE or group PNI requirements in recognition of its status as an independent broadcaster. The Commission acknowledged that a modified approach to the group-based licensing framework was appropriate because Blue Ant Television does not own and operate conventional television stations and not all of its discretionary services have more than one million subscribers as required in BRP 2010-167. Instead, the Commission maintained the individual CPE levels for each of the eight discretionary services due to their distinct licence categories,[3] and imposed a standard, incremental PNI expenditure level on all services within the group. Blue Ant Television is proposing to maintain this approach of individual CPE and PNI COLs for its discretionary services, with no group CPE or group PNI, in the new licence term.

8. While Blue Ant Television is requesting no group CPE in the new licence term, it is asking that the Commission provide a "weighted average of the current CPE requirements for the various services within the Blue Ant Group, based on the manner in which revenues skew

[1] Create Policy, para. 217.
[2] BD 2013-465.
[3] Category A services Cottage Life and T+E were given a higher CPE level of 40% while the rest of Blue Ant Television's Category B services maintained lower CPE levels of 10% or 15%.

across these discretionary services."[4] It is not clear from its licence renewal application exactly how Blue Ant Television reached a CPE level of 21% for each of its services, but the enclosed report from Boon Dog Professional Services (the "Boon Dog Report") demonstrates that a CPE level of 21% across all services roughly approximates the total CPE required in the 2015-16, 2014-15, and 2013-14 broadcast years.[5] We request that the Commission ask Blue Ant Television to clarify its approach in calculating CPE levels for the public record in this proceeding. Without the ability to determine if Blue Ant Television's assertion that the figure of 21% will ensure that status quo levels of CPE will be maintained by the Blue Ant Group in the new licence term, it is not possible for the CMPA or any other intervener to provide truly informed feedback on this proposal. However, we wish to note that a "weighted average" calculation of required spending is not the approach contemplated by BRP 2010-167 and the Create Policy. We also note that by asking for a standard CPE of 21% across its eight discretionary services, Blue Ant Television is, in fact, asking for an effective group CPE of 21%.

9. The Commission has long held that designated groups must meet a group CPE of 30%.[6] The CMPA notes that the Commission determined in BRP 2017-148 that "a standard 30% CPE level for each group and every service within the groups is appropriate" to ensure the appropriate contribution to the creation of Canadian programming by the group.[7] This standard level was adopted to avoid situations where fluctuations in the revenues of individual services and any changes to the group's composition would impact the CPE requirements of group-based licences. Moreover, the Commission determined that a more standardized approach to CPE is warranted following the Create Policy because discretionary services no longer benefit from genre protection and mandatory carriage,[8] including the Category A and B services which currently make up the Blue Ant Group.

10. In reviewing the actual historical spend of the Blue Ant Group over the last three publicly-available broadcast years, as opposed to Blue Ant Television's calculation of its required spending, this group has actually met an average CPE of 30.9% of the previous year's gross revenues. The CMPA applauds Blue Ant Television's commitment to Canadian programming

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[4] Blue Ant Television licence renewal application, Supplementary Brief, para. 55.

[5] The Boon Dog Report is enclosed as Appendix A. Please refer to pages 3 - 5 of the Boon Dog Report for these calculations regarding the proposed CPE of 21% across all the services in the Blue Ant Group.

[6] BRP 2010-167, para. 50, and BRP 2017-148, para. 30.

[7] BRP 2017-148, para. 30.

[8] *Ibid.* para. 28.

and for this over-performance on its COLs relating to CPE in the current licence term. The Commission determined in BD 2013-465 that it would not be appropriate to hold an independent broadcaster to the same standards as a large ownership group in the group-based licence framework,[9] but in this case, the Blue Ant Group has proven it is able to meet the standard commitment of a 30% CPE. The CMPA submits that the Commission should impose a group CPE of 30% based on historical expenditures and the group-based licensing framework. This would mean that the Blue Ant Group would meet the parameters of the group-based policy and be able to take advantage of all the benefits of being a designated group. Furthermore, this standard approach would ensure regulatory parity within the broadcasting industry across large ownership and independent broadcaster groups alike.

11. Accordingly, the CMPA submits that the Commission should impose either a group CPE, or an effective group CPE (i.e. a standard CPE for each of the individual services), of 30% of the previous year's gross revenues for the Blue Ant Group. In making this request, we note that Blue Ant Television is projecting to only meet its proposed CPE level of 21% for each of its services in the new licence term,[10] which actually represents a significant decrease in its commitment to CPE because its historical expenditures result in an average CPE of 30.9% for the current licence term. Our proposed 30% CPE would maintain the Blue Ant Group's commitment to CPE in the new licence term.

12. With respect to PNI, the CMPA notes that Blue Ant Television has not filed, nor has the Commission required the licensee to file, data relating to PNI expenditures for the current licence term in the licence renewal application process. Moreover, the annual PNI reports filed by Blue Ant Television for the Blue Ant Group appear to be inaccurate.[11] Those reports show that the PNI spending for the Blue Ant Group was $18 million in the 2016 broadcast year, $22.2 million in 2015, and $36.8 million in 2014. These numbers are more than twice Blue Ant Television's reported spending on CPE in the same years. Given that PNI is a subset of CPE, these PNI expenditures must be incorrect.

13. Due to the lack of financial disclosure relating to PNI in the licence renewal process and the apparent inaccuracies in the annual reports, interveners such as the CMPA do not have

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[9] Broadcasting Decision CRTC 2013-465, *Various specialty Category A and B services – Licence renewals and modified group-based licensing approach,* paras. 7 and 8 (BD 2013-465).

[10] Blue Ant Television Licence Renewal Application, Appendix 7, Abridged CPE Projections, filed December 13, 2017.

[11] Blue Ant Television's annual PNI reports are available on the Commission's website at https://crtc.gc.ca/eng/BCASTING/ann_rep/annualrp.htm#bam (Retrieved February 13, 2018).

access to the necessary data to properly assess Blue Ant Television's historical spending on PNI in the current licence term, whether or not the licensee met its COLs regarding PNI in the current licence term, and if the current and proposed PNI spending requirement remains appropriate for the next licence term. We ask that the Commission request that Blue Ant Television provide its PNI expenditures for the current licence term within this licence renewal application process to, at the very least, allow the Commission to review its historical expenditures on PNI.

14. Requiring expenditures on PNI is one of the key ways that the Commission fulfils the objectives of Canada's broadcasting policy. Recognizing the importance of supporting PNI for the achievement of the objectives of the Act, the Commission announced in the Create Policy that it intended to maintain existing PNI expenditure requirements where it stated:

> *The objectives set out in the Act declare that the programming provided by the Canadian broadcasting system should be varied, comprehensive and encourage the development of Canadian expression by providing programming that reflects Canadian values and attitudes. The objectives also declare that the programming should include a significant contribution from the Canadian independent production sector. To ensure the fulfilment of these objectives, the Commission has encouraged the production of certain types of programs -- drama, long-form documentary, music/variety and award shows-generally through expenditure requirements. These are called programs of national interest (PNI).*
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> […]
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> *The Commission considers that PNI expenditure requirements continue to be an appropriate tool for ensuring that Canadians have access to the maximum number of programs from program categories that are of national interest and that require continued regulatory support.*
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> […]
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> *Given the relatively short timeframe in which the PNI requirements have been in place, the Commission considers it would be premature to alter the policy at this*

time. The current requirements relating to PNI including the specific program categories in each linguistic market will therefore be maintained.[12]

15. The Create Policy was developed after years of unprecedented consultation with the industry and the Canadian public. It was released less than three years ago and provided deeply considered policy rationale based on the state of the broadcasting industry at that time. While there have certainly been changes in the broadcasting industry since the release of the Create Policy, there is no reason to deviate from the Commission's fact-and data- based policy decision on PNI expenditures for Blue Ant Television.

16. For all of the above reasons, we are unable to recommend a PNI level for the Blue Ant Group in the new licence term based on historical levels; however, the CMPA urges the Commission to impose a COL in line with Blue Ant Group's historical expenditures on PNI. This amount will likely be equal to, or higher than, the current PNI requirement of 13.5% which Blue Ant is proposing to maintain in the new licence term.

Blue Ant Television must be required to spend a minimum level on independent production in accordance with the Act, the group-based licensing framework, and the Create Policy in order to maintain its group-based licence

17. In its original licence renewal application, Blue Ant Television proposes to maintain the current COL that 25% of all Canadian programs broadcast (other than news, sports, and current affairs programming) be independently-produced. However, in response to the Commission's questions in the deficiency process regarding the replacement of this exhibition COL with one based on expenditures, Blue Ant Television proposed that 10% of PNI expenditures be allocated to independently-produced programs.

18. The CMPA supports an independent production COL based on expenditures for the Blue Ant Group in the new licence term because this new obligation would be more appropriate following the Commission's shift towards expenditures on Canadian programming in the Create Policy. However, we oppose Blue Ant Television's proposal for an independent production COL of 10% of PNI expenditures. This proposal represents a requirement that only 1.35% of the Blue Ant Group's previous year's gross revenues be spent on

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[12] Create Policy, paras. 276, 288, and 289.

independently-produced programming (in the event that the Commission accepts Blue Ant Television's proposal for a PNI of 13.5%). This amount would fail to uphold the objectives of Canada's broadcasting policy in relation to independent production as well as the requirements of the group-based licensing policy as provided in BRP 2010-167 and the Create Policy.

19. In BRP 2010-167, the Commission introduced the group-based licensing policy in response to the new broadcasting environment, including increasingly consolidated broadcasting ownership structures. The Commission created the parameters of the group-based policy to uphold the objectives of the broadcasting policy of Canada,[13] including that a significant contribution of programming be drawn from the independent production sector.[14] Specifically, the Commission held that group-based licensees must be subject to a COL that "at least 75% of the spending requirement for programs of national interest be allocated to independently-produced programs."[15] The Commission reviewed its approach to the group-based licensing framework as part of its Let's Talk TV consultations on the future of Canadian television and upheld the allocation of at least 75% of PNI expenditures to independently-produced programs as "one of the means by which the objective in the Act relating to the independent sector is fulfilled" in the Create Policy.[16]

20. Since the introduction of the group-based licensing framework in BRP 2010-167, the Commission has imposed the COL that at least 75% of PNI expenditures on every group-based licence with the exception of the modified group-based licence for Blue Ant Television approved in BD 2013-465. The Commission determined it would not be appropriate to hold Blue Ant Television to the same obligations as large ownerships groups because it does not meet the criteria for a group-based licence because it is an independent broadcaster.[17] Even so, the Commission determined that a modified group-based approach with sufficient flexibility would be relevant, appropriate, and consistent with the group-based licensing framework and thus approved the Blue Ant Group. Accordingly, the Commission determined that "it would not be appropriate to impose the 75% requirement applied to larger broadcast ownership groups" to the Blue Ant Group.[18] However, even with

[13] *Broadcasting Act*, section 3(1).
[14] BRP 2010-167, para. 94.
[15] *Ibid.*, para. 95.
[16] Create Policy, para. 291.
[17] BD 2013-465, para. 12.
[18] *Ibid.*, para. 27.

the consideration that the Blue Ant Group should not be held to the same strict obligations of the large ownership groups, the proposal that only 10% of PNI expenditures be allocated to independently-produced programming is simply incompatible with the group-based licensing framework and grossly inadequate with respect to Canada's broadcasting policy that requires a "significant contribution" from the independent production sector.

21. As such, the CMPA proposes that the Commission impose a COL on the television services within the Blue Ant Group that 60% of PNI expenditures be allocated to original, first-run programs from independent producers.

22. We are making this proposal in recognition that the Commission may not require the same level of commitment to independent production from the modified group-based licence for Blue Ant Television as it does from large ownership groups like Bell, Corus, and Rogers. However, the Blue Ant Group must still be required to make contributions to independent production in line with the Act, the group-based licensing framework, and the Create Policy. We submit that the reduced obligation of allocating 60% of PNI expenditures to independent production strikes the correct balance. This is the same COL that the Commission imposed upon DHX Television Limited ("DHX Television") when it acquired Family Channel in Broadcasting Decision CRTC 2014-388.[19] Family Channel was previously part of a group-based licence and, as such, had been required to allocate 75% of its expenditures on PNI to independently-produced programming. The Commission determined that it was appropriate to reduce this independent production expenditure COL from 75% to 60% original, first-run programming when this television service was removed from a group-based licence because it would still "ensure that a substantial amount of new, original programming produced by independent production companies is added to the Canadian broadcasting system."[20] Similar to DHX Television, Blue Ant Television is part of a global integrated media company, which includes production and distribution arms, and should be treated as such.

23. Furthermore, independent production COLs ensure that the objective regarding independent production enshrined in the broadcasting policy of Canada is upheld. Independent production requirements set out in Canada's broadcasting policy are important for a number of reasons. First, the Canadian broadcasting system must serve the interests

[19] Broadcasting Decision CRTC 2014-388, *Change in the effective control of Disney Junior, Disney XD and Family Channel from Bell Media Inc. to DHX Media Ltd. and licence amendments*, paras. 32-36.
[20] *Ibid.*, para. 34.

of all Canadians and their need to express themselves, in order to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada."[21] The system must also encourage Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas and values, by displaying Canadian talent and by offering a Canadian point of view.[22]

24. In order to do so, the Canadian broadcasting system seeks to reflect a diversity of expression, voices, culture, and range of opinions articulated by contributors that are independent of those who control the exhibition of the programming: in this case, Blue Ant Television. As noted by Peter S. Grant and Chris Wood in their book *Blockbusters and Trade Wars*,

> The television and film universe falls into two very broad parts: making shows and showing shows. The most direct way competition policy can secure a diversity of expression is to keep the two apart. Policies that limit the extent to which exhibitors of cultural products may own the production houses that supply films or television programs also prevent those exhibitors from favouring their own products and discriminating against others.[23]

25. In order to ensure that Canadian audiences receive programming from different sources and voices, the broadcasting system must include a significant contribution from companies that are truly independent from the few broadcasters that remain. Without appropriate regulatory measures, and the proper implementation and enforcement of those measures, the Canadian broadcasting system risks representing too few concentrated voices, both in terms of the amount of programming available to Canadians and in terms of ownership and control of the programs themselves.

26. Finally, we wish to emphasize the critical role of independent production COLs as safeguards for independent broadcasters. In the 2016-17 year, Blue Ant Television spent 64% of its Canada Media Fund (CMF) broadcaster performance envelope on in-house or affiliated production.[24] While large broadcasters (e.g. Bell, CBC, Corus, and Rogers) may only

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[21] *Broadcasting Act*, s. 3(1)(d)(i).
[22] *Ibid.*, s. 3(1)(d)(ii).
[23] Peter S. Grant and Chris Wood, *Blockbusters and Trade Wars: Popular Culture in a Globalized World*, Douglas & McIntyre, Vancouver, p. 275.
[24] Data provided by the Canada Media Fund upon request.

spend a maximum of 15% of their broadcaster performance envelopes on in-house and affiliated production,[25] there is no such cap for smaller broadcasters like DHX Television and Blue Ant Television.[26] This issue underlines the critical nature of independent production expenditure COLs for independent broadcasters: these COLs ensure that independent broadcasters fund Canadian independent production in accordance with the objectives of the Act.

27. For all of the above reasons, the CMPA submits that the Commission should impose the COL for the Blue Ant Group regarding independent production expenditures that at least 60% of the expenditures related to PNI be made to an independent production company for the acquisition or commission of original, first-run programming.

The public interest requires a public hearing to examine the renewal of the Blue Ant Group

28. The CMPA requests that the Commission call a public hearing to examine the broadcasting licence applications submitted by Blue Ant Television for the renewal of the Blue Ant Group. With the exception of the current proceedings, the Commission has called all previous applicants for a new or renewed group-based licence to a public hearing. The public interest demands a public hearing due to the proposed amendments to the Blue Ant Group's requirements related to independent production.

29. While the Commission has recently implemented a "more efficient" procedure for licence renewal applications,[27] it is important that the Commission initially determine whether the public interest requires a public hearing.[28] A public hearing for the renewal of the Blue Ant Group is in the public interest because it will allow the Commission to fully canvass interested parties for their input on these applications, which goes beyond what is permitted within the standard Part 1 application process. The fuller discussions provided by a public hearing leads to a more complete record before the Commission, which in turn, strengthens its decision-making.

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[25] Canada Media Fund, *Performance Envelope Manual 2017-18*, section C.2.8.

[26] We wish to note that small broadcasters have smaller performance envelopes than the large broadcasters.

[27] Preamble to Broadcasting Information Bulletin CRTC 2015-116, *New procedures for licence renewal applications* (BIB 2015-116).

[28] Pursuant to the *Broadcasting Act*, section 18(2), "The Commission shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that such a hearing is not required in the public interest."

30. The Commission held a public hearing for the recent licence renewals for the television services of large English- and French-language ownership groups.[29] In the Notice of Consultation, the Commission stated that it would "examine the effectiveness of the group-based approach over the last licence term for the large ownership groups, as well as its application to the next licence term" and "implement certain policy decisions set out in the Create Policy.[30] It is clear that the Commission deemed that the public interest required a public hearing to examine the group-based licence applications for the large ownership groups. We submit that the reasons the Commission called a public proceeding to renew the television licences held by the large ownership groups should equally apply to the Blue Ant Group, namely:

- to examine the effectiveness of a modified group-based licence approach over the last licence term for the Blue Ant Group, as well as its application in the new licence term, and
- to implement certain policy decisions set out in the Create Policy.[31]

31. Finally, the Commission examined the initial (and most recent) licence application for the Blue Ant Group as part of a public hearing in Broadcasting Notice of Consultation CRTC 2013-19.[32] While this public hearing was held before the changes to the Rules of Procedure and release of BIB 2015-116, it is clear that the Commission considered the views of various interveners within its process of examining the proposal for a modified group-based licence for the Blue Ant Group.[33] For example, the Commission considered (and imposed) the CMPA's proposed COL for the exhibition of independent production that "25%

[29] The group-based licence renewal decisions for the large broadcasting ownership groups is currently being reconsidered in Broadcasting Notice of Consultation CRTC 2017-429, *Reconsideration of the decisions relating to the licence renewals for the television services of large English-language private ownership groups* and Broadcasting Notice of Consultation CRTC 2017-428, *Reconsideration of the decisions relating to the licence renewals for the television services of large French-language private ownership groups.*

[30] Broadcasting Notice of Consultation CRTC 2016-225, *Notice of hearing, Renewal of television licences held by large English- and French-language ownership groups*, para. 2.

[31] BNC 2016-225, paras. 1 and 2.

[32] 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*.

[33] BD 2013-465, paras. 7 and 8.

of all Canadian programs broadcast, other than news, sports, and current affairs programming, be produced by independent production companies."[34]

32. From a practical point of view, we wish to note that the Rules of Procedure permit the Commission to call a public hearing at this time and that timelines allow for an oral hearing before the expiry of the licences on August 31, 2018.[35] Accordingly, the CMPA submits that the Commission should call a public hearing to examine the modified group-based licence proposed by Blue Ant Television in order to meet the public interest.

The Commission should review its definition of "independent production company" to ensure that programs which fulfill independent production expenditure requirements are truly independently produced

33. The CMPA wishes to address some serious concerns regarding the overall integrity of COLs related to independent production. The Commission's current definition of "independent production company"[36] fails to ensure that programs claimed by broadcasters as "independent" are truly independent in terms of ownership and control or that independent producers retain a meaningful share of the intellectual property rights or profits associated with the content they produce. We are concerned that the Commission's practices are not ensuring that the broadcasting system includes a "significant contribution" from the Canadian independent production sector.[37] Accordingly, the CMPA requests that the Commission update the definition for "independent production company" provided with respect to the COLs for the Blue Ant Group in the new licence term.

34. Some broadcasters are exploiting the current definition of "independent production company" to structure and claim programs that they effectively own and control – which necessarily means those programs are not independently produced but are service productions – for the purposes of meeting their COLs. Allowing broadcasters to claim programs that they own and control as "independent" means that the current definition of

[34] *Ibid.*, para. 27.

[35] *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (Rules of Procedure), section 5(1).

[36] Appendix to Broadcasting Decision CRTC 2013-383, COL#8.

[37] *Broadcasting Act*, s. 3(1)(i)(v)

"independent production company" is not achieving the objectives of Canada's broadcasting policy with respect to independent production.

35. The CMPA requests that the Commission replace the current definition of "independent production company" at all licence renewals to ensure that the programs commissioned and claimed as meeting broadcasters' independent production COLs are actually independently produced. The CMPA proposes the following new definition:

> *For the purpose of this condition of licence, "programs produced by independent production companies" means programs produced by a Canadian company carrying on business in Canada with a Canadian business address, owned and controlled by Canadians, whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, none of the equity, and in respect of which the licensee and any related entities is not identified as the producer in the program's credits and does not own or control, directly or indirectly, and cannot exploit or acquire to its benefit any of the following:*
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> - *The copyright in the program;*
> - *Any rights upon which the program is based (the underlying rights);*
> - *Any non-Canadian distribution or licence rights to the program, or to any products or projects ancillary or derivative to the program;*
> - *A share of net profits, or revenue share (unless derived from the exploitation of the program, or any products or projects ancillary or derivative to the program), and provided that such share does not exceed, on a percentage basis, the licensee's (including any affiliated or related entities) cash contribution that is over and above the licensee's (including any affiliated or related entities) fair market value cash licence fee contribution to the financing of the program's budget; and*

- *An equity share in the program, or in any products or projects ancillary or derivative to the program, unless such share does not exceed, on a percentage basis, the licensee's (including any affiliated or related entities) cash contribution that is over and above the licensee's (including any affiliated or related entities) fair market value cash licence fee contribution to the financing of the program's budget.*

36. This is an overarching issue within broadcasting regulation but we wish to draw special attention to this matter within the Blue Ant Group licence renewal proceeding because Blue Ant Television often requires producers to give up distribution rights in order to obtain a broadcaster licence fee. Blue Ant Television creates and licenses content that is not only broadcast in Canada but internationally as well. It is no secret that distribution is an important part of their corporate strategy. However, Canadian broadcasters with an international reach should not be allowed to scoop up international rights without fair compensation. Independent producers are often in the best position to determine what export partner (be it the producer's own content export arm, any other Canadian international content exporter, or sales agent) is best suited to sell a program internationally, what partner may bring additional financing to a program, and what international viewpoint or experience will help the producer attract an audience outside of Canada. Our proposed definition helps to ensure true independence and also helps ensure that those who are best placed to exploit and promote a program internationally are able to do so.

37. The CMPA has called upon the Commission to review this definition in previous interventions, including the group licence renewal proceeding for English-language services,[38] the first phase of the broadcasting consultation on future programming distribution models,[39] and Aboriginal Peoples Television Network's application for renewal of its broadcasting licence and mandatory distribution order.[40] We are also including this request in our interventions with respect to the DHX Television broadcasting licence renewal

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[38] Broadcasting Notice of Consultation CRTC 2016-225, *Renewal of television licences held by large English- and French-language ownership groups*.
[39] Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models*.
[40] Application no. 2017-0641-7.

applications (Application nos. 2017-0821-5, 2017-0822-3, and 2017-0823-1) and City Saskatchewan's broadcasting licence renewal application (Application no. 2017-0833-0).

Transparent reporting by broadcasters is integral to the public interest

38. The CMPA wishes to draw attention to the critical importance of transparent public reporting by broadcasters in the licence renewal process and annual reports, particularly in reference to COLs related to CPE, PNI, and independent production. The public reporting of these COLs allows the public to monitor broadcaster compliance and instills public confidence in the regulation of the broadcasting system. It also allows interveners to provide more informed feedback in policy and licensing proceedings. As provided above, the Blue Ant Group licence renewal applications did not provide the necessary financial information to allow the public to properly review their proposed COLs regarding PNI in the new licence term. Without this information, interveners are unable to provide meaningful feedback to the Commission to support their decision-making in the licence renewal process.

39. It is also important that the Commission gather data regarding broadcasters' digital media revenues. Blue Ant Television's programming is available online through portals such as the Love Nature YouTube channel and makeful.com. Given the digital shifts in the market, it is imperative that the Commission use its information gathering power to obtain accurate, up-to-date data regarding broadcasters' digital media revenues to both monitor the evolution in the market and to ensure that the Commission has the latest data to inform its policy decisions. This data request is in accordance with the Commission's information gathering requirements as articulated in section 4 of the DMEO.[41] The Commission possesses an information gathering power with respect to digital television services and we request that the Commission use this power to collect this important data.

40. Finally, the CMPA wishes to support the Commission's proposed COL, and Blue Ant Television's willingness to adhere to this COL, that the Blue Ant Group respond to Commission questions about CPE and PNI expenditures for two years following the end of the previous licence term:

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[41] Broadcasting Order CRTC 2012-409, *Amendments to the* Exemption order for new media broadcasting undertakings *(now known as the* Exemption order for digital media broadcasting undertakings).

In the two years following the end of the previous licence term, the licensee shall report and respond to any Commission enquiries relating to expenditures on Canadian programming, including programs of national interest, made by the licensee for the licence term.

The licensee shall be responsible for any failure to comply with requirements relating to expenditures on Canadian programming, including programs of national interest that occurred during the previous licence term.

41. We believe this COL will help to ensure broadcaster accountability between licence terms with respect to CPE and PNI expenditures.

Conclusion

42. The CMPA supports the licence renewal of the Blue Ant Group, subject to our comments within this intervention. We request that the Commission impose COLs relating to CPE and PNI for the services in the group based on historical expenditures, which means a 30% CPE and a PNI of at least 13.5%. As well, we request that the Commission require the Blue Ant Group to make at least 60% of the expenditures related to PNI to an independent production company for the acquisition or commission of original, first-run programming. Finally, we request that the Commission call a public hearing to examine the Blue Ant Group's licence renewal applications in order to meet the public interest.

43. The CMPA appreciates the opportunity to share our comments regarding the television licence renewal applications for the Blue Ant Group in this proceeding. Should the Commission require any additional information regarding this intervention, please do not hesitate to contact me directly.

Sincerely,

[*Filed Electronically*]

Kelsey McLaren
Director, Regulatory
kelsey.mclaren@cmpa.ca

cc. Astrid Zimmer, Senior Legal Counsel, Blue Ant Media Inc., astrid.zimmer@blueantmedia.ca

Encl.

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