



Broadcasting Decision CRTC 2018-335

PDF version

References: 2016-225, 2017-429 and 2017-429-1

Ottawa, 30 August 2018

Public record: 1011-NOC2017-0429

The application numbers are set out in the decision.

Reconsideration of licence renewal decisions for the television services of large English-language private ownership groups

In May 2017, the Commission issued decisions to renew the licences for the television services of the large English-language private ownership groups. In an Order in Council issued pursuant to section 28 of the Broadcasting Act (the Act), the Governor in Council referred these decisions back to the Commission for reconsideration and hearing.

Specifically, the Governor in Council asked the Commission to reconsider aspects of the decisions relating to expenditures on programs of national interest (PNI), music programming and short-form content.

This decision sets out the Commission's determinations further to that reconsideration process.

Programs of national interest

Bell and Corus services will be subject to PNI expenditure requirements of 7.5% and 8.5% of the previous broadcast year's gross revenues, respectively. Rogers' PNI expenditure requirements will be maintained at 5% of the previous broadcast year's gross revenues.

Music programming

The groups will be required to direct 0.17% of their services' previous broadcast year's gross revenues to FACTOR. This amount may be counted towards meeting their Canadian programming expenditure requirement. This expenditure requirement will be temporary.

Short-form content

The Commission considers that additional specific funding from the groups for short-form content is not necessary. The contributions of the Bell Fund to short-form content help to ensure adequate support for the creation of such content despite the dissolution of the BravoFACT fund.

The amended conditions of licence will take effect 1 September 2018, the beginning of the second year of the licence term for the groups' affected services, and will apply until 31 August 2022, the end of the licence term.

In reconsidering its decisions, the Commission took into consideration the Order in Council while remaining mindful of its obligations under the Act and of the record of this proceeding.

Introduction

1. On 15 May 2017, the Commission issued a series of decisions to renew the licences for the television services of large English- and French-language private ownership groups. As part of this renewal, the Commission implemented policies stemming from Broadcasting Regulatory Policy 2015-86 and Broadcasting Regulatory Policy 2016-224.
2. By Order in Council P.C. 2017-1060, dated 14 August 2017 (the OIC), the Governor in Council referred back to the Commission for reconsideration and hearing certain aspects of the decisions set out in Broadcasting Decisions 2017-143 to 2017-147 (French-language ownership groups) and Broadcasting Decisions 2017-148 to 2017-151 (English-language ownership groups), indicating that the decisions derogate from the attainment of the objectives of the Canadian broadcasting policy set out in section 3(1) of the *Broadcasting Act* (the Act), and in particular section 3(1)(s).¹
3. The Governor in Council indicated that it would be material for the Commission to consider how it can be ensured that significant contributions are made to the creation and presentation of programs of national interest (PNI),² music programming, short films and short-form documentaries. The OIC also directed the Commission to "take into consideration that creators of Canadian programming are key to the Canadian broadcasting system and that, while the industry is going through a transformation, Canadian programming and a dynamic creative sector are vital to the system's competitiveness and contribute to Canada's economy."
4. The Commission asked Bell Media Inc. (Bell), Corus Entertainment Inc. (Corus) and Rogers Media Inc. (Rogers) (collectively, the groups) to update their licence renewal applications and submit any information relevant to the aspects of the decisions being reconsidered, including new financial information. The documents filed by the groups, as well as related correspondence, can be viewed using the following links:

¹ Section 3(1)(s) of the Act states that "private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, (i) contribute significantly to the creation and presentation of Canadian programming, and (ii) be responsive to the evolving demands of the public."

² In the English-language market, PNI include Canadian dramas, long-form documentaries and award shows.

- Bell Media Inc.
Application 2017-0788-7
 - Corus Entertainment Inc.
Application 2017-0791-0
 - Rogers Media Inc.
Application 2017-0793-6
5. The groups were also asked to comment on the possibility that amended conditions of licence, notably those relating to certain spending requirements, would be implemented for the entire duration of their services' current licence terms, i.e., from 1 September 2017 to 31 August 2022.
 6. The Commission held two phases of consultation and sought comments from interveners on the responses provided by the groups.
 7. Consistent with the OIC and based on its examination of the updated applications in light of applicable regulations and policies, the interventions received and the licensees' replies, the Commission considers it appropriate to address the following issues:
 - the implementation date for the amended conditions of licence;
 - expenditures on PNI;
 - expenditures on music programming; and
 - expenditures on short films and short-form documentaries.
 8. The Commission considers that the matters and proposals that were raised by interveners and the groups and that are not directly related to the above-noted issues fall outside of the scope of this proceeding and the OIC. The Commission has therefore not taken them into account in this decision.

Regulatory framework

9. In regulating and supervising all aspects of the Canadian broadcasting system, the Commission must seek to implement the broadcasting policy set out in section 3(1) of the Act, while having regard to the regulatory policy outlined in section 5(2) of the Act.
10. In the present case, the Governor in Council has determined that the Commission's previous decisions derogated from the attainment of the objectives of the broadcasting policy for Canada set out in section 3(1) of the Act, and in particular section 3(1)(s). In asking the Commission to reconsider its decisions, the Governor in Council has therefore asked that the Commission do so with specific regard to section 3(1)(s) of the Act. However, the Commission must also continue to be mindful of the regulatory

policy objectives relating to the regulation and supervision of the Canadian broadcasting system, as outlined in section 5(2) of the Act. The Commission has therefore re-examined its decisions and evaluated the evidence placed on the public file in the context of the current proceeding in light of the above-noted objectives of the Act.

Implementation date for the amended conditions of licence

11. Section 28 of the Act states:

28 (1) Where the Commission makes a decision to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).

(2) An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing shall set out the details of any matter that, in the opinion of the Governor in Council, may be material to the reconsideration and hearing.

(3) Where a decision is referred back to the Commission under this section, the Commission shall reconsider the matter and, after a hearing as provided for by subsection (1), may

- (a) rescind the decision or the issue, amendment or renewal of the licence;
- (b) rescind the issue of the licence and issue a licence on the same or different conditions to another person; or
- (c) confirm, either with or without change, variation or alteration, the decision or the issue, amendment or renewal of the licence.

12. Based on section 28, the Governor in Council referred the licence renewal decisions back to the Commission for reconsideration, specifying the elements of the decisions to be reconsidered. Since the Governor in Council chose to refer these decisions back to the Commission rather than to set them aside, these decisions have remained in effect since 1 September 2017. The Commission must therefore consider the most appropriate date to implement the amended conditions of licence set out in this decision.

Positions of parties

13. The groups submitted that the Commission does not have the authority under the Act to set aside the licensing decisions or impose new conditions of licence on a

retroactive basis. They further argued that if the Governor in Council had intended the Commission to revisit the groups' obligations for the first year of the licence term, it would have set aside the decisions. Finally, they raised concerns with respect to the cost and operational difficulties of implementing retroactive obligations given that a year of the licence term would already have passed and that the programming acquisitions for the 2018-2019 broadcast year would already be commissioned.

14. Blue Ant Media Inc. (Blue Ant) and DHX Media Ltd. (DHX) also opposed the imposition of additional requirements on a retroactive basis, arguing that such a decision would undermine confidence in the regulatory process and create uncertainty for all licensees.
15. The Canadian Media Producers Association (CMPA), the Directors Guild of Canada (DGC), On Screen Manitoba and the Writers Guild of Canada (WGC) supported the implementation of the new requirements on all groups as of 1 September 2017 such that the broadcasters would make up any shortfall for the 2017-2018 broadcast year by the end of their current five-year licence term. They noted that broadcasters have had effective notice that PNI expenditure requirements could likely be increased as of 14 August 2017 when the OIC was issued, only three months after the renewal decisions and before these decisions took effect on 1 September 2017.
16. The CMPA further argued that the Commission has the power to implement amended conditions of licence as of the effective date of the licence renewal and that postponing the implementation of the amendments would have a significant negative impact on Canadian creators for the 2017-2018 fiscal year. The DGC shared this position, adding that it did not see a significant hardship in the application of the new requirements since all broadcasters argued that their practice was to treat PNI expenditure requirements as a floor, not a ceiling, with some reporting that they regularly exceed projections and requirements.
17. The Association québécoise de l'industrie du disque, du spectacle et de la vidéo and the Canadian Independent Music Association (ADISQ/CIMA), in a joint intervention, stated that the implementation of any new requirement for such programming should be retroactive to 1 September 2017.

Commission's analysis and decision

18. The Commission must regulate with certainty and predictability so that licensees are able to operate in a stable regulatory environment. Making the amended conditions of licence effective as of 1 September 2017 would not be conducive to fostering such an environment. Licensees have already made expenditure commitments in line with their conditions of licence as they stood for the 2017-2018 broadcast year.
19. Accordingly, the Commission considers it appropriate to impose the amended conditions of licence set out in the appendix to this decision as of 1 September 2018, the beginning of the second year of the licence term for the groups' affected services.

Expenditures on programs of national interest

Background

20. In Broadcasting Regulatory Policy 2010-167 (the group-based policy), the Commission stated that it would impose a minimum PNI expenditure requirement of 5% of the previous broadcast year's gross revenues on each group but specified that a higher requirement could be imposed on a group where justified in view of its historical expenditures. At least 75% of the spending requirement for PNI would be allocated to independently produced programs.
21. Subsequently, in the group-based licence renewal decisions issued in 2011 and 2012, various PNI expenditure requirements were imposed on each group, as follows: Bell and Shaw Media Inc. (Shaw): 5%; Corus: 9%; and Astral Media inc.: 16%.³ A PNI expenditure requirement of 5% was established for Rogers in 2014.⁴ In each case, the Commission took into consideration the historical PNI expenditures of the services to be included in the groups and established the PNI expenditure levels accordingly. It was the Commission's view that this approach would ensure adequate funding for PNI over the licence term, without unduly affecting other types of Canadian programming or imposing unnecessary burdens on the groups.
22. In Broadcasting Regulatory Policy 2015-86, the Commission stated that it considered 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. Further, with respect to the English-language groups, given the relatively short time in which the PNI expenditure requirements had been in place, the Commission considered that it would be premature to alter the policy at that time.
23. In Broadcasting Decision 2017-148, consistent with its determinations set out in Broadcasting Regulatory Policies 2010-167 and 2015-86, the Commission established a standard minimum PNI expenditure requirement of 5% for all qualifying services in the Bell, Corus and Rogers groups. While the standardized PNI expenditure requirement imposed in the decisions was lower in some cases than both the past requirements for various services in the groups and their actual expenditures, the Commission stated that it considered that this approach would allow the groups and their services to compete on an equal footing and give them the flexibility to adapt in a more competitive marketplace. However, the Commission also encouraged the groups to exceed this minimum requirement.

³ For Bell, Broadcasting Decisions 2011-444 and 2011-444-1; for Shaw, Broadcasting Decision 2011-445; for Corus, Broadcasting Decision 2011-446. In Broadcasting Decision 2012-241, the Commission renewed the licences for services belonging to the Astral Media bilingual group, including TMN Encore (MPIX) and TMN, which were later acquired by Bell. The initial PNI expenditure requirement for these services was set at 16% in that decision but was increased to 18% in Broadcasting Decision 2014-62 following their acquisition by Bell.

⁴ See Broadcasting Decision 2014-399.

Positions of parties

PNI expenditure requirement

24. In updating their applications following the issuance of the OIC, Bell and Corus both initially proposed a PNI expenditure requirement of 6% for their services, while Rogers proposed to maintain its PNI expenditure requirement of 5%. During the second phase of comments, Corus proposed that the PNI expenditure requirement for the duration of the current licence term be based on historical requirements as opposed to historical spending. Certain parties supported those proposals.
25. The CMPA, the Documentary Organization of Canada (DOC), the DGC and On Screen Manitoba submitted that PNI expenditure requirements should be based on historical spending levels (8% for Bell, 9% for Corus and 5% for Rogers). Friends of Canadian Broadcasting submitted that historical spending levels are appropriate but proposed a PNI expenditure level of 8% for Bell and Corus and 5% for Rogers. These parties expressed concerns that expenditures on Canadian drama and documentaries, could decrease if the Commission does not establish PNI expenditure levels that correspond to historical expenditures.
26. As an alternate proposal, the DGC submitted that if the Commission wished to implement a standardized approach, then it should set the PNI expenditure requirements at 9% for all groups, with the exception of Rogers.
27. Other parties proposed imposing PNI expenditure levels higher than historical spending levels. For example, the WGC proposed a one-percentage point increase to the above-noted historical PNI expenditure levels while the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) submitted that Corus and Bell should allocate at least 10% of their revenues to PNI and that Rogers should allocate at least 6% of its revenues to PNI.

Use of 2016-2017 broadcast year data

28. The CMPA, the DGC and the WGC⁵ submitted that the Commission should not base its determinations in this proceeding on 2016-2017 broadcast year data as that data was not publicly available during the submission of their interventions. Moreover, they argued that without access to detailed 2016-2017 broadcast year data for all broadcast groups, interveners were unable to determine the accuracy and reliability of the data filed by the groups.

Commission's analysis and decision

29. In regard to interveners' objections to the use of certain data, the Commission notes that they had an opportunity to comment on the data as filed by the groups in financial appendices as part of this proceeding. The Commission considers they had

⁵ The position of the DGC and the WGC in this regard was supported by a report prepared by the research and consulting firm Boon Dog and filed on the record of this proceeding.

sufficient data to prepare their submissions and that making reference to the data for the 2016-2017 broadcast year in this decision does not cause harm to the interveners or broadcasters.

30. In addition, the Commission considers that using the most recent data is appropriate given the changing nature of the broadcasting industry. Analyzing historical expenditures for the entire previous licence term rather than a portion of a term provides a better understanding of each licensee's financial situation.
31. In assessing the various proposals on the record, the Commission has given weight to the objectives set out in section 3(1)(s) of the Act, while remaining mindful of the regulatory policy outlined in section 5(2) of the Act. In light of this, the Commission considered three options to help ensure that Canada's dynamic creative sector is well supported by Canada's broadcasting sector in the creation of PNI programming:
 - the PNI expenditure levels proposed by the groups;
 - the PNI expenditure levels based on the groups' historical requirements; and
 - the PNI expenditure levels based on the groups' historical expenditures.

PNI expenditure requirements proposed by the groups

32. As noted above, the groups initially proposed PNI expenditure levels that did not diverge substantially from those set out in the relevant conditions of licence in the licence renewal decisions that were referred back to the Commission for reconsideration. In particular, Bell and Corus both proposed to adhere to a 6% PNI expenditure requirement, while Rogers proposed to adhere to a 5% PNI expenditure requirement. Based on the projections filed in the context of this proceeding, the net effect of these levels would result in an average expenditure by the groups of \$158.9 million per year from the 2018-2019 through 2021-2022 broadcast years, resulting in a likely decrease in PNI expenditures relative to the previous licence term.
33. Part of this decrease would be due to projected declines in revenues for the groups, which they anticipate to be 9.7% lower on average over the current licence term relative to the previous licence term. However, the larger part of the decrease would be attributable to the proposed PNI expenditure requirements. Specifically, when taking into account the lower PNI expenditure requirements in the first year of the current licence term, the proposed requirements would result in expenditures that are lower than those of Bell and Corus in the previous licence term.
34. The groups' proposals would provide them with some flexibility in light of projected declines in their revenues and profitability. However, it would likely translate into the smallest amount of PNI spending among the three options.
35. Moreover, given that the Governor in Council considered it material to take into consideration the fact that creators of Canadian programming are key to the Canadian broadcasting system, that the industry is going through a transformation, and that

Canadian programming and a dynamic creative sector are vital to the system's competitiveness and contribute to Canada's economy, this proposal would not address the concerns raised in the OIC. Therefore, the Commission is of the view that this proposal would not strike the right balance between the broadcasting policy objectives of the Act as the large broadcast groups' contributions would not be sufficient, given their financial and other resources.

PNI expenditure requirements based on historical requirements

36. The second option would base the new PNI expenditure requirements on the groups' rounded historical requirements. Based on the Commission's calculations, this approach would result in a minimum PNI expenditure level of 6.5% for both Bell and Corus and 5% for Rogers.
37. Under this option, based on the groups' projected revenues over the course of the current licence term, the minimum required PNI expenditures would amount to a yearly average of \$171 million from the 2018-2019 to 2021-2022 broadcast years for the three groups combined.
38. Such levels would not represent a significant departure from the proposals of the groups and would represent a middle ground between those proposals and those of many interveners on the record of this proceeding. This approach would add some balance between creators' needs for support and the groups' request for flexibility in the evolving broadcasting landscape. However, due to the application of the decision only to the remainder of the licence term, the average PNI requirements for the licence term under this approach would be lower than the groups' historical requirement. Moreover, the actual dollar value of these expenditures could decline proportionally to group revenues should revenues decline as projected.⁶ As such, this proposal would not provide a level of PNI expenditures that is as stable or sustainable as through the use of historical expenditure levels. Consequently, the Commission is of the view that this proposal would not ensure that Bell and Corus in particular contribute to the creation and presentation of Canadian programming to an extent that is fully consistent with their financial and other resources, as contemplated in section 3(1)(s) of the Act.

PNI expenditure requirements based on historical expenditures

39. This proposal received the greatest support among interveners. Under this option, the percentage of PNI expenditures based on the previous broadcast year's gross revenues would be maintained for the current licence term in a manner that closely resembles that for the previous licence term.

⁶ Over the 2012-2013 to 2016-2017 broadcast years, the groups' combined average revenues were \$2.95 billion per broadcast year, with a profit before interest and taxes (PBIT) margin of 17.1%. The projected combined average revenues for the 2017-2018 through 2021-2022 broadcast years are \$2.67 billion per broadcast year, with a PBIT margin of 12.2%.

40. Based on the groups' rounded average PNI expenditures from the 2012-2013 to 2016-2017 broadcast years,⁷ the Commission considers that a PNI expenditure requirement of 7.5% of the previous broadcast year's gross revenues for Bell, 8.5% for Corus and 5% for Rogers would be appropriate. Under this option, based on the groups' projected revenues over the course of the current licence term, the minimum required PNI expenditures would amount to a yearly average of \$206.8 million from 2018-2019 to 2021-2022 for the three groups combined.
41. Establishing PNI expenditure requirements for each group based on their historical expenditures would ensure that overall spending in PNI categories is maintained, thus providing more stable and sustainable funding for this programming. Moreover, it would ensure that the groups are contributing to the creation and presentation of Canadian programming in a manner that is consistent with their financial and other resources, as contemplated in section 3(1)(s) of the Act. Finally, this modified requirement would strike a balance between the creative sector's need for support and the groups' need for flexibility in the evolving broadcasting landscape.
42. While this would require Bell and Corus to increase their PNI expenditures relative to their projections, actual PNI expenditures could potentially still decline should the groups' revenues decline as projected. Moreover, given that PNI expenditures are a subcategory of Canadian programming expenditures (CPE), this proposal would not necessarily increase the groups' total expenditures. Consequently, while this option is the most beneficial for Canada's creative sector, the Commission considers that it also remains sensitive to the groups' ability to contribute to such programming as both Corus's and Bell's projected revenues could support these requirements. As for Rogers, the Commission estimates that due to its composition, its revenue share and its mix of assets, the situation for this group is different than that for the others. This view was also shared by many interveners in this process. Consequently, the Commission will maintain Rogers' PNI expenditure requirement at 5%.
43. In the Commission's view, these PNI expenditure levels strike an appropriate balance between the importance of the Canadian production sector and the essential role it continues to play for the Canadian economy, and the groups' respective abilities to invest in the creation of this programming. Accordingly, in the appendix to this decision, the Commission has set out **conditions of licence** for the Bell and Corus services reflecting amended PNI expenditure requirements of 7.5% and 8.5% of the previous broadcast year's gross revenues, respectively, effective 1 September 2018.

Expenditures on music programming

Background

44. Currently, pursuant to the 2017 licence renewal decisions, English-language groups are not required to contribute directly to music programming. Moreover, in the

⁷ For Rogers, the data is for 2014-2015 through 2016-2017 broadcast years only as it did not have PNI expenditure requirements prior to that time.

English-language market, the definition of PNI does not include programs from program categories 8 Music and dance, including music video clips, and 9 Variety, as is the case for the French-language market. Consequently, English-language groups do not have a regulatory incentive to devote a portion of their expenditures to such programs.

45. In Broadcasting Regulatory Policy 2015-86, the Commission chose to eliminate the genre protection regime. While this gave licensees greater flexibility, it also resulted in the removal of conditions of licence relating to nature of service, including those of services closely associated with music, namely, Much (formerly MuchMusic), M3⁸ (formerly Much More Music) and CMT (formerly Country Music Television). Consequently, services are no longer required to produce or fund programming from specific program categories, such as music programming.
46. In referring Broadcasting Decisions 2017-148 through 2017-151 back for reconsideration, the Governor in Council asked the Commission to consider how it can be ensured that a significant contribution is made to the creation and presentation of music programming.

Positions of parties

Applications from the groups

47. Bell proposed to expand the definition of PNI in the English-language market to include programs focused on music. It also proposed that broadcasters receive a 25% CPE credit for supporting Canadian music content, while Corus proposed a 50% credit. Rogers supported these proposals and suggested that funding could also be redirected from the Canada Media Fund (CMF) or FACTOR toward music and short-form programming.
48. The groups, as well as DHX and Blue Ant, argued that the use of such incentive-based measures would be more consistent with the Commission's most recent policy approach, which emphasizes standardization across services along with programming flexibility, rather than the imposition of requirements relating to specific content categories. Rogers also maintained that any proposal to change the manner in which television broadcasters contribute to the creation and production of music programming should be addressed in a broad policy proceeding, noting that new requirements would apply only to linear television services and not to unlicensed digital players. Rogers added that the Act does not require every undertaking to support each genre of programming, and that the money currently spent on other Canadian programming would have to be redirected to support the production of music, music videos and short-form programming if such a requirement were imposed.

⁸ The service M3 was rebranded by Bell in September 2016 as Gusto, a service devoted to cooking, cuisine and lifestyle programming. It is no longer related to music programming.

Interventions

49. ACTRA, Entertainment One, Friends of Canadian Broadcasters and the DGC submitted that former service-specific conditions of licence relating to music programming should be re-imposed on Much and CMT. Further, ACTRA, along with the CMPA, the DGC, the DOC and the WGC, opposed the proposal to include music programming under PNI, arguing that adding a new category within PNI does not necessarily ensure that the English-language groups will take steps to support it. The CMPA also argued that if the definition of PNI were expanded, PNI expenditure requirements must also be increased to ensure that the inclusion of new program categories does not undercut spending on programming from program categories that may be considered vulnerable.
50. The CMPA, the DGC and On Screen Manitoba supported the proposal for CPE credits for music programming, short films and short-form documentaries, while ACTRA opposed any incentives or credits.
51. For their part, ADISQ/CIMA recommended that a portion of CPE be directed to a fund supporting music and music videos. In this regard, they calculated that the groups' annual contribution to this type of programming under their prior requirements for MuchMusic, M3 and CMT amounted to approximately \$6 million in the English-language market, 0.7% of their total CPE. They therefore proposed to require the groups to direct 0.7% of their CPE to FACTOR to offset this loss in the system.
52. Alternatively, ADISQ/CIMA proposed that the contribution by broadcasting distribution undertakings (BDUs) to local expression be increased and that the CMF or certified independent production funds (CIPFs) create a new program to support music videos. They added that the Commission should initiate a broader proceeding with a view to requiring other services devoted to music, such as Stingray and digital platforms, to contribute to the funding of music video clips.

Commission's analysis and decision

Expenditure requirement

53. Under the requirements imposed prior to the 2017 licence renewal decisions, MuchMusic and M3, owned by Bell, were required to contribute 7% and 5% of their services' previous broadcast year's gross revenues, respectively, to the MuchFACT fund (see Broadcasting Decision 2011-444). CMT, owned by Corus, was required to devote 11% of its previous broadcast year's gross revenues to the development and production of Canadian music video clips (see Broadcasting Decision 2016-39).
54. The Commission has assessed the estimates provided by ADISQ/CIMA based on the conditions of licence imposed on MuchMusic, M3 and CMT prior to the 2017 licence renewal decisions. Based on the projected revenues of these three services for the 2017-2018 broadcast year, if their conditions of licence were still in effect, their contributions to the MuchFact fund and to the development and production of

Canadian music video clips would have amounted to \$4,779,831 for that broadcast year, or 0.17% of the revenues of the English-language groups combined.

Considering the size of the Canadian English-language market and the significant impact of the U.S. music industry on that market, a loss of this magnitude in the production sector could have significant consequences for the creators of this type of content.

55. In regard to the proposal to expand PNI categories, the Commission is concerned that adopting such a proposal could destabilize support for other PNI categories by creating a situation in which groups could reduce expenditures currently allocated to dramas and documentaries, particularly in a context where television revenues are in decline. Further, the Commission considers that any changes to significant regulatory tools concerning PNI are best undertaken in the context of a broader policy review.
56. The Commission recognizes the groups' preference for incentive-based measures to address this issue. However, credits might prove ineffective in addressing the issue raised in the OIC since they would merely represent an incentive and would not re-establish the predictable funding from which the music industry formerly benefitted, particularly as the programming currently broadcast by several of the groups' services is not related to music video clips or other music programs.
57. In light of the above, the Commission is of the view that an expenditure requirement would be a more appropriate means to offset the effects of the loss of funding in the music programming sector and ensure continued support for its creators. As noted by the groups, the television sector is no longer the only one to offer this type of content. Therefore, that sector should not be solely responsible for providing long-term support to the music industry. In its recent report requested by the Governor in Council entitled *[Harnessing Change: The Future of Programming Distribution in Canada](#)*, (the Harnessing Change report) the Commission suggested that the principle that all players benefitting from the Canadian system should contribute in appropriate and equitable ways is essential to creating a vibrant domestic market in the future.
58. The Commission considers that an expenditure requirement imposed on television licensees should constitute a temporary measure, until the end of their current licence term, to allow the music industry to adapt. It further considers that a standard requirement for all groups would be the simplest and most appropriate measure to provide support for music programming, while ensuring regulatory parity among the groups consistent with the elimination of genre protection. Moreover, being able to count these expenditures toward their CPE requirements would provide the groups with some regulatory flexibility in implementing this requirement.

Recipient fund

59. In addition, the Commission considers it appropriate to require that these expenditures be directed to an existing fund, as was the case for MuchMusic and M3. Whether broadcasters choose to present the resulting music video clips and music programs or not, this measure will ensure that the groups make significant

contributions to the creation of music programming. The Commission has determined that FACTOR would constitute the most appropriate recipient as its funding comes from both public and private sources and it has a proven infrastructure, distribution model and accountability mechanisms. In addition, FACTOR provides support to the creation and production of Canadian music programs, mainly anglophone, which is consistent with the objectives of the Act. Further, FACTOR provides support to English-language official language minority communities in Quebec.

60. With respect to other expenditure requirements proposed by ADISQ/CIMA, particularly an increase in BDU contributions to local expression to increase support for music programs and music video clips, as well as the creation of a component to support this type of programming within the CMF, the Commission considers that these requests are outside the scope of the reconsideration.
61. In light of the above, in the appendix to this decision, the Commission has set out a **condition of licence** requiring the groups to direct 0.17% of their services' previous broadcast year's gross revenues to FACTOR, effective from 1 September 2018 until 31 August 2022, the end of the current licence term. These amounts can be counted towards fulfilling CPE requirements.

Expenditures on short films and short-form documentaries

Background

62. In the OIC, the Governor in Council stated that the Commission should “consider how it can be ensured that significant contributions are made to the creation and presentation of short films and short-form documentaries.”
63. While the term “short form” has never been fully defined by the Commission, programs that are less than 22 minutes in duration are generally considered short-form programming. Depending on the nature of the program and its content, short-form programs can be classified under a number of the television program categories set out in Broadcasting Regulatory Policy 2010-808.
64. In the past, the short-form programming specifically contemplated in the OIC was funded through contributions to the BravoFACT fund, which Bell, as the licensee of Bravo!, was required to make by condition of licence. BravoFACT was established by Bell to fund the creation of short-form content, including content broadcast by Bravo!.
65. In light of the standardization of conditions of licence for discretionary services and the elimination of genre protection, the Commission removed the requirement for Bell to contribute to this fund when the licences for the Bell group of services were last renewed (see Broadcasting Decision 2017-149).
66. Subsequent to the release of the OIC, upon the dissolution of BravoFACT, it was announced that the CIPF known as the Bell Fund would set monies aside each year to help underwrite the costs of content similar to what BravoFACT funded in the past.

This included the funding of short-form fiction and non-fiction digital series. For both of these short-form content envelopes, funded series must be original. Programming must be a maximum length of 15 minutes per episode, with a minimum of six episodes. Filler content and segmented versions of 30-minute episodes are ineligible. In 2017, the Bell Fund contributed over \$2.4 million in grants to 14 projects as part of its Short-Form Digital Series (non-fiction) program. In addition, the Bell Fund has a program to fund fiction-based short-form digital series, for which it recently announced a number of recipients.

Positions of parties

67. As mentioned above, Bell submitted that the Commission should maintain its policy approach of not funding specific genres of programming, following the elimination of genre protection. In this regard, Corus requested that the Commission not expand the definition of PNI to include short-form programming. Should the Commission expand that definition, Corus requested that the Commission not increase PNI expenditure requirements. Instead of a stringent requirement, Bell and Corus proposed the introduction of incentive-based measures, such as a CPE credit, to support short-form programming. Rogers supported these proposals and suggested that funding could also be redirected from the CMF or FACTOR toward this type of programming.
68. Blue Ant and DHX opposed standard expenditure requirements for short-form programming, arguing that with the removal of genre protection and the creation of an even more competitive environment, programming services must be able to allocate programming resources toward the most popular and compelling programming in their respective programming genres.
69. ACTRA, Entertainment One, Friends of Canadian Broadcasters and the DGC submitted that former service-specific conditions of licence should be re-imposed on Bravo!, while the DOC did not consider it necessary to reinstate these requirements.
70. The DGC and Entertainment One, as well as the CMPA, further indicated that they would be open to the introduction of CPE credits where appropriate.
71. The CMPA added that the existence of the Bell Fund does not replace the need for support for short-form content as the fund will not finance short films or short-form documentaries unless they form part of a series of at least six episodes. Instead, the CMPA and On Screen Manitoba advocated that a portion of the groups' spending be directed to a fund supporting the production and exhibition of music, music video and short-form programming.

Commission's analysis and decision

72. In light of the OIC's emphasis on section 3(1)(s) of the Act, the Commission considers it appropriate to focus its analysis on whether additional measures are needed to further the following objectives:
 - making significant contributions to the creation and presentation of short films

and short-form documentaries; and

- meeting the evolving demands of the Canadian public.

Creation and presentation of short films and short-form documentaries

73. The Bell Fund is an independent production fund that is certified by the Commission. As such, it is required to operate independently from Bell and has strict limits on the amount of administrative costs that can be associated with its operation (specifically, no more than 5% of its revenues obtained from BDU contributions).
74. In regard to the CMPA's concerns that the envelopes provided by the Bell Fund should not be viewed as a replacement for BravoFACT due to the funding being limited to series, the Commission does not share this view. The Bell Fund works under the Commission's policy for CIPFs to help fund content that will be consumed by Canadians and be made available abroad by various broadcasters and distributors on a variety of platforms. In this regard, according to its own audited financial statements, the Bell Fund seeks to "encourage and increase the production of Canadian content for the domestic broadcasting and new media marketplace with a particular emphasis on encouraging the linkages between these two sectors and producing interactive content that reflects current and emerging industry needs and practices." In the Commission's view, although the content the Bell Fund is funding is somewhat different than what was funded by BravoFACT, this should be viewed more as an expression of where the market for content is headed than as a detriment.
75. Based on the information at its disposal, the Commission considers that the monies allocated by the Bell Fund to short-form content are an adequate replacement for the contributions of the former BravoFACT fund. Further, as a CIPF, the Bell Fund is available to other broadcasters, not just to Bell services, and must meet certain operational and administrative criteria.
76. In light of the above, the Commission finds that the creation of short-form content is better supported now than would be supported through the imposition of specific requirements in this regard on Bravo!, Bell or the English-language groups as a whole, and that the imposition of conditions of licence requiring the groups to provide additional specific funding toward the cost of producing short-form content is not necessary.

Meeting the evolving demands of the Canadian public

77. Short-form content is often more geared toward consumption on digital platforms and will likely continue to be produced for such platforms. Further, its format of short-form content lends itself to mobile viewing. . However, expenditures on online-only content are not typically counted under the groups' respective CPE requirements. In other words, while Canadians may see this content as valuable and broadcasters may want to fund and monetize it for consumption elsewhere than on traditional television services, the existing CPE policy approach not facilitate the groups' efforts to leverage their CPE requirements to produce short-form content destined for digital

platforms.

78. In the Harnessing Change report, the Commission indicated that it would consider updating definitions of CPE in light of the digital environment. The Commission reiterates its intention to consider such changes in the future.

Conclusion

79. In light of all the above, the Commission **confirms** Broadcasting Decisions 2017-148 to 2017-151 with the changes set out in the appendix to this decision.

Secretary General

Related documents

- *Rogers Media Inc. – Licence renewals for English-language television stations, services and network*, Broadcasting Decision CRTC 2017-151, 15 May 2017
- *Corus Entertainment Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-150, 15 May 2017
- *Bell Media Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-149, 15 May 2017
- *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, Broadcasting Decision CRTC 2017-148, 15 May 2017
- *Quebecor Media Inc. – Group-based licence renewals for French-language television stations and services*, Broadcasting Decision CRTC 2017-147, 15 May 2017
- *Groupe V Média inc. – Licence renewals for French-language network, television stations and services*, Broadcasting Decision CRTC 2017-146, 15 May 2017
- *Corus Entertainment Inc. – Licence renewals for French-language television services*, Broadcasting Decision CRTC 2017-145, 15 May 2017
- *Bell Media Inc. – Licence renewals for French-language television services*, Broadcasting Decision CRTC 2017-144, 15 May 2017
- *Renewal of licences for the television services of large French-language ownership groups – Introductory decision*, Broadcasting Decision CRTC 2017-143, 15 May 2017
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016

- *Country Music Television – Licence amendments*, Broadcasting Decision CRTC 2016-39, 4 February 2016
- *Let's Talk TV – The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2014-399, 31 July 2014
- *Astral broadcasting undertakings – Change of effective control – Follow-up to the Astral-BCE transaction*, Broadcasting Decision CRTC 2014-62, 17 February 2014
- *Astral Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2012-241, 26 April 2012
- *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011
- *Shaw Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-445, 27 July 2011
- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 2011, as corrected by Broadcasting Decision CRTC 2011-444-1, 22 August 2011
- *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010

Appendix to Broadcasting Decision CRTC 2018-335

Amendments to Broadcasting Decisions 2017-149 to 2017-151

The Commission **confirms** Broadcasting Decisions 2017-149 to 2017-151 with the following changes.

In regard to the television services that form the Bell Media Group, the Commission replaces condition of licence 7 set out in Appendices 3 and 4 to *Bell Media Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-149, 15 May 2017 (Broadcasting Decision 2017-149), with the following **condition of licence**:

7. In accordance with *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, the licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest, as defined in paragraphs 71 to 73 of that regulatory policy:
 - a) at least 5% of the previous year's gross revenues of the undertaking during the first year of the licence term (i.e., the 2017-2018 broadcast year); and
 - b) at least 7.5% of the previous year's gross revenues of the undertaking during the remaining years of the licence term.

In regard to the television services that form the Corus Group, the Commission replaces condition of licence 7 set out in Appendices 2 and 3 to *Corus Entertainment Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-150, 15 May 2017 (Broadcasting Decision 2017-150), with the following **condition of licence**:

7. In accordance with *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010, the licensee shall in each broadcast year devote to the acquisition of or investment in programs of national interest, as defined in paragraphs 71 to 73 of that regulatory policy:
 - c) at least 5% of the previous year's gross revenues of the undertaking during the first year of the licence term (i.e., the 2017-2018 broadcast year); and
 - d) at least 8.5% of the previous year's gross revenues of the undertaking during the remaining years of the licence term.

In addition, the Commission imposes the following **condition of licence** on the television services that form the Bell Media Group set out in Appendix 1 to Broadcasting Decision 2017-149, the television services that form the Corus Group set out in Appendix 1 to Broadcasting Decision 2017-150 and the television services

that form the Rogers group set out in Appendix 1 to *Rogers Media Inc. – Licence renewals for English-language television stations, services and network*, Broadcasting Decision CRTC 2017-151, 15 May 2017:

For the 2018-2019 broadcast year and until the end of the licence term, the licensee shall, in each broadcast year, direct 0.17% of the previous broadcast year's gross revenues of the undertaking to FACTOR. These expenditures can be counted by the licensee towards fulfilling its Canadian programming expenditure requirement.