



September 27, 2011

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

Submitted via E-Pass

Dear Mr. Morin,

**Re: Broadcasting Notice of Consultation CRTC 2011-525 – Astral Media Inc.  
Licence Renewal, Application 2011-0483-5**

1. The Writers Guild of Canada (the WGC) is the national association representing over 2000 professional screenwriters working in English-language film, television, radio and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system. The WGC wishes to **support** the above-mentioned Application for Licence Renewal, subject to the following comments.
2. As a union that represents screenwriters who work in English, the WGC is primarily concerned with applications for the renewal of English-language services. In particular, the WGC wishes to focus its comments in this proceeding on the requested Group Licence Renewal of Astral Media Inc. ("Astral"). The WGC requests the opportunity to appear at the public hearing scheduled to commence on December 5, 2011 in order to further elaborate on the following issues as they relate to Astral's services from the perspective of creators of Canadian programming.
3. The WGC is relying on the Commission to conduct its usual due diligence review of Astral's services to ensure that these services have been in compliance with their conditions of licence. The public record is not sufficient for stakeholders to conduct their own independent review due to the high level of confidentiality. Our comments are subject to our assumption that should there be compliance issues, the Commission will raise them and enforce its regulations.

**Executive Summary**

4. Over the years Astral has been a supporter of Canadian programming and, due to the conditions of licence of its services, primarily a supporter of Canadian drama. However, Astral's requested Bilingual Designated Group would provide Astral with the flexibility to re-allocate expenditures from English-language services to its French-language services where it is easier to spend money on Canadian programming. This requested flexibility, and a reduction of individual

CPEs to 30%, would allow Astral to reduce its support of Canadian programming. We ask the Commission to deny Astral's request for a Bilingual Designated Group and to renew each service's licence individually.

5. Further we ask the Commission to revisit Family Channel's CPE and exhibition requirements in order to bring it in line with its competition within the youth and family market, namely YTV, Treehouse and Teletoon. TMN's conditions of licence should be amended to reflect recent amendments to Movie Central's conditions of licence through the Group Licensing Decision, provided that TMN's existing CPE is maintained.

### **2010 TV Policy and English Language Group Licence Renewals**

6. The WGC welcomed the 2010 TV Policy<sup>1</sup> and its shift to broadcaster group licence renewal. Broadcasters are licensing programming for all of their stations in a group and managing their services as a group. Group licensing addresses the two needs of reducing potential gaming of the regulations and providing broadcasters with additional flexibility to manage their broadcast services over their corporate group.
7. The 2010 TV Policy created the policy framework of group CPE and group PNI CPE to counter declining conventional expenditure on Canadian programming and particularly drama, as the result of the 1999 TV Policy. In return, the Commission granted the broadcasters the flexibility to share expenditure requirements across their group and air the programming when and where the broadcaster deemed appropriate. This quid pro quo was determined to be appropriate for Bell, Shaw, and at their request, Corus. The Commission determined that due to Rogers' lack of specialty services at this time, it could not take advantage of sharing PNI CPE across a group and therefore it was not appropriate for Rogers to be licensed as a group.
8. As well, the 2010 TV Policy was very clear in stating that individual CPEs for specialty services would be maintained. The creation of a group CPE and an OTA CPE was not to be an excuse for the lowering of individual specialty service CPEs. The WGC feels that it is important to remind parties to this hearing that the 2010 TV Policy was intended to increase broadcaster spending on Canadian programming rather than allow them to decrease their spending.
9. Also, in the 2010 TV Policy the Commission clearly stated that the Policy, with the exception of CMF licence fee top up and conventional exhibition requirements, would not apply to French-language broadcasters. The Commission had determined that French-language broadcasters already spent a large portion of their programming budgets on Canadian programmes and therefore did not need to be required to spend through a CPE or enticed through the added flexibility of group licensing.
10. French-language broadcasters do not have any opportunity to simulcast U.S. programming and their market is less interested in U.S. programming than is the

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<sup>1</sup> Broadcasting Regulatory Policy CRTC 2010-167

English-language market. For those reasons, the French-language broadcasters have continuously supported Canadian programming above the regulatory minimum requirements. As Astral itself notes “French-language broadcasters are more likely to exceed the minimum CPE requirements in an environment where the data shows that Canadian programs are more popular with Francophone audiences than Anglophone audiences and more essential to the success of French-language programming services.”<sup>2</sup> This is why the Commission has taken a somewhat asymmetrical approach to regulating each market by requiring the group licensing framework for English-language broadcasters but not for French-language broadcasters.

### **Astral Application for a Bilingual Designated Group**

11. Further, at no time has the Commission indicated a willingness to license a group comprised of both languages. The WGC finds that Astral’s application to renew some of their services as part of an Astral “Designated Bilingual Group” to be inappropriate and contrary to the principles of the 2010 TV Policy. While we appreciate that Astral is unique in its corporate structure as it includes a number of services in each language, that uniqueness is not a good enough reason to cherry pick from the English-language group licensing policy framework. Astral has requested that only some of the 2010 TV Policy apply (i.e. 30% group CPE, 100% flexibility between services) because of the unique nature of its services. Astral has few conventional services and primarily drama services.
12. Astral suggests in its Supplementary Brief that the flexibility that it is requesting is necessary for it to be competitive with Over the Top (“OTT”) services such as Netflix. The English-language corporate groups also argued for additional flexibility as essential to surviving competition with Netflix, however the Commission limited the amount of flexibility granted under the Group Licensing Decision. OTT services may have a negative impact on some broadcasters, however, the solution is not to dismantle or undermine the existing policy framework that is essential to ensuring that Canadians have the choice to watch Canadian broadcasting on at least the regulated platforms.
13. The WGC’s primary concern with the Astral “Designated Bilingual Group” is that with 100% flexibility between services, Astral would be able to allocate expenditures to its French-language services, where all agree it is easier to spend CPE. Astral would be able to increase its support for French-language programming at the expense of English-language programming. This market difference is why the Commission has regulated the languages separately and why Astral should not be allowed to combine them in one group. The 2010 TV Policy was intended to increase broadcasters spending on English-language Canadian programming and not provide them with opportunities to spend less.
14. Further, the makeup of the Designated Bilingual Group means that there are very few opportunities for programs to be licensed by the group and the costs

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<sup>2</sup> Deficiency letter of Nathalie Dorval, Vice-President, Regulatory Affairs and Copyright, Astral Media, to the CRTC dated August 23, 2011, para 10  
WGC Submission to Notice of Consultation CRTC 2011-525 Astral Licence Renewal

amortized as they are broadcast across the group. This is one of the intended benefits from group licensing. However, unless both languages' versions are licensed, English-language programs will not also be broadcast on the French-language service and vice versa. Additionally, there are few opportunities, if any, for kids programs that are commissioned by Family Channel to be broadcast by TMN, a service aimed at adults with contemporary series and feature films or for French-language music programs commissioned by MusiquePlus to be broadcast by English-language preschool service Disney Junior. These varied services may be managed by Astral as a group but more importantly programming is not being commissioned, licensed or exploited on a group basis. A group licence is not appropriate.

15. We will address a number of Astral's requests in turn but as the Commission determined with Rogers, a corporate group may have particular circumstances that render the 2010 TV Policy inapplicable. The WGC urges the Commission to find that Astral's unique corporate structure is another example of circumstances that prevent it from being considered a designated corporate group. The Commission should renew each Astral-owned service individually, without any ability to allocate expenditures between services.

#### **Astral's Support of Canadian Programming**

16. An additional concern of the WGC's is Astral's request to reduce all per service CPE's to 30%. The Commission decided in the 2010 TV Policy (and reiterated it through the English Group Licence Renewal decision<sup>3</sup>) that existing CPEs of individual services would remain, as they are an important element of genre exclusivity and minimum levels of Canadian programming on each service. It would therefore be inappropriate for Astral to reduce all of its services, which currently have CPEs that range from a low of 24% (SuperÉcran) to a high of 51% (Canal Vie), with most services being over 30%. Group licensing is not intended to put Canadian programming in a worse position than it is now. The WGC urges the Commission to maintain the individual CPEs of each service, subject to our comments below about the Family Channel CPE.
17. The WGC would also like the Commission to revisit Family Channel's CPE. Family Channel has over 6 million subscribers. It is a very successful broadcaster of tween programming, and preschool programming on its multiplex service Disney Junior. However, at 30% its CPE is less than that of competitors YTV (31%) and Treehouse (31%). As well, Family Channel benefits from the 150% time credit which YTV and Treehouse do not have access to. The Commission recently<sup>4</sup> re-affirmed the 150% time credit for Movie Central on the basis that it will enable Movie Central to 'continue providing significant support for the production of new Canadian feature films'.<sup>5</sup> We have no objection to TMN having the same condition of licence. But Family Channel is not a movie service. It primarily broadcasts television series. There is a great deal of Canadian preschool, school age and tween television programming that Family and Disney

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<sup>3</sup> Broadcasting Decision CRTC 2011-441

<sup>4</sup> Corus Group-based Licence Renewal Broadcasting Decision CRTC 2011-446

<sup>5</sup> Ibid para 10

- Junior could choose from and commission. Canadian creators and producers are recognized the world over for our children's and youth programming. There is no need to provide a 150% time credit to support this category of programming. In fact, the time credit allows Family Channel and Disney Junior to meet its Canadian programming exhibition targets with fewer hours of original programming and rewards them for doing less.
18. To make matters worse, Family Channel's exhibition requirements are an anomaly. While Family Channel was licensed as a pay service, it acts more as a specialty service. Rogers sells Family Channel and Disney Junior in its VIP Package (which also includes 33 specialty services including YTV and Treehouse) while customers must buy its VIP Ultimate Package to buy TMN. Bell ExpressVu sells Family Channel and Disney Junior in a Family theme pack that also includes specialty services Teletoon and Much Music. As a result, its subscriber levels are analogous to specialty services. Family Channel has over 6 million subscribers, compared to YTV's 11 million, Treehouse's 8.5 million and Teletoon's 7.9 million subscribers. Meanwhile, the two pay services TMN and Movie Central have together 2.1 million subscribers.
  19. TMN and Movie Central both have fairly low Canadian programming exhibition requirements because their subscriber levels and therefore revenues were considered and continue to be limited. As well, both were licensed as movie services and there are a limited number of Canadian feature films each year. These circumstances do not apply to Family Channel. It therefore seems to the WGC that it is inappropriate that Family Channel should have a Canadian programming exhibition requirement similar to TMN<sup>6</sup> of 25% of the time that Family Channel broadcasts and 30% of the evening period (defined as 6pm to 10pm). Family Channel's competitors YTV, Treehouse and Teletoon all have a Canadian programming exhibition requirement of 60% of the broadcast year and 60% of prime time.
  20. The combined result of Family Channel's lower CPE, ability to use the 150% time credit and lower Canadian programming exhibition requirements is that the Family Channel schedule has very little Canadian programming, particularly in prime time. Even in the schedule provided with Astral's application, the majority of Canadian programs are reruns of older programs (e.g. "Life With Derek" 2005 – 2009, "Katie and Orbie" 1994-2002) or air at times when few kids are watching.<sup>7</sup> Meanwhile Canadian youth audiences are watching primarily Disney programming such as "Suite Life on Deck" and "Wizards of Waverley Place". CRTC regulation exists to ensure that Canadian audiences have the choice to watch Canadian programming and with this service that is not happening. We strongly urge the Commission to increase Family Channel's CPE and Canadian programming exhibition requirements to a level that is comparable to its competition YTV, Treehouse and Teletoon and to remove the 150% time credit.

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<sup>6</sup> TMN's prime time period is 6pm to 11pm. Family Channel's earlier prime time reflects its youth audience.

<sup>7</sup> On September 22, 2011 "Life With Derek" aired at 12am, 2:32am and 4:04am

21. Family Channel has a condition of licence that it must spend 5% of its CPE on script and concept development. TMN must spend \$1.3 million per year on script and concept development. While these two provisions are fairly unique to Family and TMN they demonstrate an appreciation for the importance of development to the success of Canadian programming and particularly drama, given that Family Channel and TMN are primarily drama services. When there is sufficient funded development, screenwriters will have the time to improve script material and increase the chance of a program's success with audiences. It is cheaper to fix a program at development than during or after production. Removing this condition of licence would discourage the services from spending a sufficient portion of their resources on scripts that might not get broadcast. We encourage the Commission to deny Astral's request to have these conditions of licence removed.
22. The WGC agrees with Astral<sup>8</sup> that the two regionally-based pay services Movie Central and TMN should have the same conditions of licence as they share the Canadian territory between them. However, Movie Central agreed to increase its CPE to 31% at the recent Group Licence Renewal while, based on subscriber levels in excess of 820,000, in accordance with its conditions of licence TMN has a CPE of 32%. Astral has requested a reduction in TMN's CPE to 30%. The WGC urges the Commission to maintain TMN's CPE of 32%. TMN has more subscribers than Movie Central<sup>9</sup> so it is appropriate that it have a slightly higher CPE.
23. Over the past few years TMN (and Movie Central) have become an important place for Canadian creators to pitch less conventional projects. HBO and other premium U.S. services have moved to support more original series rather than just feature films, with titles such as "True Blood", "The Pacific" and "Game of Thrones". To compliment this more adult fare, the Canadian premium services have been commissioning more challenging Canadian series. While Astral submitted with their August 2, 2011 Deficiency Letter a list of programs scheduled for a particular week, it neglected to mention edgy Canadian series such as "Call Me Fitz", "Good Dog", "Living In Your Car", "The Yard" and "Durham County", to name a few from more recent years. In order to ensure that this level of support for innovative Canadian drama is maintained, TMN must be required to maintain its CPE. There is no need to change the status quo.
24. The WGC expects that there is likely no need for a PNI CPE for Astral services as they spend more than the PNI CPEs set by the Commission under the Group Licensing Decision, provided that the overall CPE and Canadian programming exhibition requirements are set at appropriate levels as set out above. We are pleased that Astral has agreed to report annually to the Commission on its exhibition of PNI but we hope that it will fully submit the Commission's required reporting including expenditure on PNI. It is important that the Commission be able to monitor performance to ensure that regulatory intervention is not required.

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<sup>8</sup> Astral Supplementary Brief pg. 9

<sup>9</sup> 2010 subscribers: TMN – 1,220,869, Movie Central – 962,705 as per CRTC Financial Summaries  
WGC Submission to Notice of Consultation CRTC 2011-525 Astral Licence Renewal

**Conclusion**

25. In conclusion, we encourage the Commission to deny Astral's request for a Designated Bilingual Group with a group and individual CPEs of 30%. Each of Astral's licences should be renewed individually. We request that the Commission ensure that expenditure on Canadian programming, and particularly Canadian drama, is at least maintained by the conditions of licence of TMN and Family Channel. In the spirit of the 2010 TV Policy, broadcasters' support of Canadian programming and the hard to finance categories such as Canadian drama, should be encouraged. It is an important principle of the 2010 TV Policy that Canadian programming and Canadian drama should not be in a worse position after a licence renewal than it was prior to. Additional flexibility in order to meet competitive threats from other services including Over the Top services such as Netflix, should not come at the expense of Canadian drama.

26. We thank you for this opportunity to provide you with our comments.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker', with a stylized, cursive script.

Maureen Parker  
Executive Director

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