



March 13, 2019

Filed Electronically

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

Dear Mr. Doucet:

Re: Application 2017-0743-1: Broadcasting licence renewal for Super Channel (formerly Allarco Entertainment) – Second Phase

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,200 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.
2. In this application, Allarco Entertainment 2008 Inc., the general partner, as well as limited partner, with C.R.A. Investments Ltd., carrying on business as Allarco Entertainment Limited Partnership (Allarco), is seeking to renew the broadcasting licence for the discretionary programming undertaking Super Channel, as a national English-language general interest pay television discretionary service. The WGC submitted comments in the first phase of this proceeding on March 27, 2018. Since then, Allarco and the Commission have exchanged correspondence on a number of issues with respect to this application, and Allarco has provided additional information that was not available in the first phase. The Commission has now asked for interveners to comment in this second phase, and the WGC is pleased to provide our additional comments.

Reiteration of the WGC's Prior Comments

3. The WGC has reviewed the additional information provided by Allarco since March 27, 2018, and has seen nothing therein which would cause us to modify our primary points as provided in our comments in the first phase of this proceeding. The WGC still opposes any reduction of Super Channel's Canadian programming expenditure requirements (CPE), and submits that it should be maintained at 30% of revenues of the previous broadcast year. The WGC still submits that Super Channel should be made subject to a minimum spending requirement on programs of national interest (PNI), based on Super Channel's historical spending on PNI. The WGC remains opposed to the elimination of Super Channel's condition of licence (COL) with respect to script and concept development, and continues to believe

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that if the Commission nevertheless does eliminate this COL, it will become even more important to impose a PNI requirement on the service. And the WGC opposes Allarco's request to be granted a five-year licence term, and we propose a three-year term instead.

Script and Concept Development – Apparent Non-Compliance

4. The WGC wishes to focus its present comments primarily on Super Channel's COLs regarding script and concept development. Super Channel is currently subject to COL #7, which states:

Included in the expenditures required under condition of licence 5, the licensee shall expend on script and concept development, including bursaries for writers, excluding overhead costs, at least \$500,000 in each broadcast year.¹

5. Super Channel is also currently subject to COL #8, which states:

In addition to the expenditures required under conditions of licence 5, 6 and 7, the licensee shall expend as payment of the shortfall on its expenditures on regional outreach programs an amount equal to \$500,000 and \$1 million, respectively, on script and concept development in each broadcast year until the end of the current licence term which expires on 31 August 2017. The total amount to be paid equals \$6 million.²

6. In the course of correspondence between Allarco and the Commission, it came to light that Super Channel treats script and concept expenditures as loans. Allarco states:

Script and Concept are treated as development loans reported on the balance sheet. If the loan is uncollectable it would only then be expensed and reported in administration expenses. However, it was included in form 1310 for the purpose of calculating CPE and reported on line #11 to a maximum of \$500,000.³

7. In response, the Commission noted that loans do not qualify as expenditures meeting CPE requirements as set out in COLs #7 and #8 of Appendix 1 to BD CRTC 2013-468, as per Public Notice 1993-93, which states that "Loans by broadcasters to assist in the financing of Canadian productions are not eligible expenses for purposes of the formula."⁴ Allarco replied that it has been advancing script and concept development loans since 2007; provides a specimen of its standard "Development Financing Agreement" which it believes is "in a form which independent producers are widely familiar";⁶ and argues that Public Notice 1993-93 does not address script and development loans, and

¹ Broadcasting Decision CRTC 2013-468

² Broadcasting Decision CRTC 2013-468

³ Response – 23 May 2018 – Allarco Entertainment Response to CRTC June 18 2018, pg. 3.

⁴ Public Notice CRTC 1993-93.

⁵ Email Re: Supplementary request for additional information in regard to the application filed by Allarco Entertainment Limited Partnership to renew the broadcasting licence of Super Channel – Application number 2017-0743-1, August 1, 2017 [sic], pg. 2.

⁶ Response – August 1 2018 – Final Response to CRTC letter of August 1, 2018, pg. 2.

therefore the recoupment of some of the loans advanced pursuant to COL #8 is not prohibited by CRTC 1993-93.⁷

8. The WGC agrees with the Commission that loans do not qualify as expenditures meeting the CPE requirements as set out in COL #7 or COL #8, and therefore disagrees with Allarco that loans are an allowable way to meet these COLs. Public Notice CRTC 1993-93 states on its face that loans are not eligible, and Allarco does not explain how or why this plain reading of the Public Notice somehow does not apply to Super Channel and/or to these COLs. Allarco states that it has advanced script and concept development loans for eleven years, but this by itself does not render non-compliant activity compliant, it simply means that Allarco has been in non-compliance with its COLs for eleven years. The WGC submits that it is ultimately the licensee's responsibility to ensure they are in compliance with their COLs and applicable Commission regulations and policies, and that it is not primarily the Commission's responsibility to "catch" and "correct" non-compliant behaviour. Allarco further states that its development loans are "in a form which independent producers are widely familiar", yet this too does not render non-compliant activity compliant, and Allarco provides no further detail on how or why its loans might be "industry standard". For the WGC's part, it is not our experience that interest-bearing loans are a typical form of broadcaster development financing, and Allarco does not discuss how loan repayment does or does not interact with its licence fees or other production financing that may also count towards its CPE requirements. Even if Super Channel's development loans were "industry standard", in whole or in part, its script and concept development requirements are Commission-imposed COLs that must comply with the Commission's policies, not "industry requirements" that need only comply with "industry standards".
9. Allarco also appears to imply that its obligations under COL #8 should be treated differently than its other spending obligations as it pertains to development loans. Allarco states:

It is noted that the loans advanced pursuant to COL #8 were not counted by the licensee as CPE expenditures. Further, Public Notice 1993-93, does not address script and development loans that are advanced by broadcasters, that are not claimed by the broadcasters to be CPE expenditures. It is our view that the recoupment of some of the loans advanced pursuant to COL #8, is not prohibited by virtue of CRTC 1993-93.⁸

10. If Allarco is claiming that expenditures pursuant to COL #8 were not claimed as part of expenditures meeting COLs #5, #6, or #7, then this should be simply self-evident, because COL #8 is explicit that its expenditure obligations are *in addition to* those of COLs #5, #6, or #7. If Allarco is claiming that expenditures made pursuant to COL #8 are somehow of a fundamentally different nature than other Canadian programming expenditures, such that Public Notice CRTC 1993-93 doesn't apply to them, then the WGC disagrees. For one thing, Allarco does not explain in detail *why* COL #8 should be treated differently than other CPE obligations, it simply implies that it should be. But more importantly, the WGC disagrees that COL #8 is different than other CPE COLs as far as Public Notice CRTC 1993-93 is concerned. COL #8 describes expenditure requirements on regional outreach and script and concept development which are no different in kind than those described in COLs #6 and #7. Indeed, COL #8 is a shortfall payment COL of costs that were exact analogues of current COLs #6 and #7 which are, and

⁷ Response – August 1 2018 – Final Response to CRTC letter of August 1, 2018, pg. 4.

⁸ Response – August 1 2018 – Final Response to CRTC letter of August 1, 2018, pg. 4. Emphasis in original.

were,⁹ directly linked by the Commission to the broader “CPE requirements” in COL #5.¹⁰ In other words, the obligations set out in COL #8 are just as much “CPE” as any other for the purposes of Public Notice CRTC 1993-93, there is no reason to distinguish them as Allarco attempts to do, and as such we submit that the use of loans under COL #8 is just as inappropriate there as it is under COLs #5, #6, or #7.

11. As such, the WGC is of the view that a repaid or repayable loan is not an expenditure under COL #7 or #8, and Super Channel is still in apparent non-compliance with its COLs with respect to script and concept development. Given this fact, and subject to the Commission’s verification of non-compliance, the WGC submits that Super Channel must still expend as payment of the shortfall the amounts on script and concept development (among other things) outstanding, which will now be larger than the amount outstanding as of the issuance of Super Channel’s prior renewal under Broadcasting Decision 2013-468, and this shortfall payment should be imposed as a condition of licence over the next licence term. The WGC submits that notwithstanding the financial difficulty of the licensee, COLs cannot be repeatedly breached, and Allarco cannot be made the beneficiary of its own non-compliance.

Script and Concept Development – Bursaries for Writers

12. The WGC notes that COL #7 states in part that, “the licensee shall expend on script and concept development, including bursaries for writers, excluding overhead costs, at least \$500,000 in each broadcast year”. [Emphasis added.]
13. Based on the information on the public file, it appears to the WGC that Allarco has not provided any of its script and concept development expenditures in the form of bursaries for writers. If this is correct, the WGC would be disappointed that not only has Allarco purported to make expenditures on script and concept development in the form of repayable, interest-bearing loans, but that none of those expenditures have been provided directly to the Canadian creative screenwriting talent that ultimately write the stories, and create the characters, themes, and narrative arcs, that are at the heart of great Canadian programming, despite explicit permission from the Commission to do so. The WGC recognizes that COL #7 may permit the licensee to make zero expenditures on script and concept development in the form of bursaries to writers, but is nevertheless disappointed that Allarco seems to have chosen to do so. As such, we would ask Allarco to speak to whether it has in fact issued such bursaries or not and, if not, to discuss its reasoning for this decision.

CPE – Apparent Non-Compliance

14. In our March 27, 2018 comments in the first phase of this proceeding, the WGC stated that it had reviewed the most recent Statistical and Financial Summaries with respect to Super Channel, and notes that for four of the past five years for which data is publicly available, Super Channel appears to have spent significantly less than its required minimum on CPE.¹¹ Allarco stated, however, that it has “fully respected the conditions of licence” since its 2013 renewal, and the Commission had not highlighted this issue in any of its communications with Allarco on the public file. Further, Commission

⁹ Appendix to Broadcasting Decision CRTC 2006-193.

¹⁰ And to COL #4 in Appendix to Broadcasting Decision CRTC 2006-193.

¹¹ Paras. 20-21.

staff drew our attention to current COL #10, which allows Super Channel to use a mix of the accrual and cash bases of accounting in making its calculations with respect to CPE, with a reconciliation to be provided by the licensee, along with the fact that the information in the Statistical and Financial Summaries is reported using the accrual method, all of which may explain this apparent discrepancy.

15. This may still be the case, however, a reconciliation from Allarco is still not on the public record of this proceeding, to our knowledge, nor is any other information explaining the matter and/or that would allow us to properly and independently examine Super Channel's compliance with its CPE requirements. As such, the WGC feels it must reiterate this issue on the public record, and ask that the Commission investigate and officially clarify the apparent non-compliance with respect to CPE and, if such an issue does exist, to take it into consideration in its determinations regarding Super Channel's licence renewal. In particular, we submit that the Commission should impose a COL requiring any shortfall, if it exists, to be paid in the subsequent licence term.

Conclusion

16. The WGC is pleased to provide comments in this proceeding, and thanks the Commission for the opportunity to do so.

Yours very truly,



Maureen Parker
Executive Director

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