



July 24, 2023

Filed Electronically

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

Dear Mr. Doucet:

**Re: Application No. 2023-0379-1: Part 1 Application to Amend certain Conditions of Licence
Applicable to Bell Media's English-Language Television Stations and Discretionary Services**

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 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 Part 1 application, Bell Media Inc. (Bell) is seeking:
 - a reduction in Bell's Canadian programming expenditure requirements (CPE) from 30% to 20%;
 - a reduction in Bell's programs of national interest (PNI) expenditures from 7.5% to 5%;
 - an expansion of the current PNI categories to include programming categories 2(a) Analysis and interpretation, 8(a) Music and dance other than music video programs or clips, 9 Variety, 10 Game shows, and 11(a) General entertainment and human interest, and 11(b) Reality television; and
 - to increase Bell's obligation from 75% to 100% of its PNI expenditures to be made to an independent production company.¹
3. The WGC **opposes this application.**
4. Bell's application joins several other broadcaster applications over recent months that effectively seek to overturn or drastically alter fundamental pillars of the Canadian broadcasting regulatory

¹ Application of Bell, Appendix 1, Supplementary Brief, para. 2.

framework, doing so in the guise of a Part 1 application, entirely outside of a policy proceeding, and while the Commission is in the middle of the modernization of the Canadian broadcasting system following passage of Bill C-11, the *Online Streaming Act*, pursuant to Broadcasting Notices CRTC 2023-138, -139 and -140.² These applications are inappropriate and clear attempts by broadcasters to undermine the larger policy framework review by undercutting its foundations before it can even be built. These applications raise issues that are far more appropriately dealt with in the context of the very policy framework proceeding the Commission has already embarked upon. The applications, if granted, would seriously hurt Canadian creators, deprive Canadian audiences of programming choice, and fail to further the objectives of the *Broadcasting Act* (the Act). The WGC has opposed these other applications on similar grounds, as we oppose this one.

5. Bell's application is completely inappropriate given its scope and timing. The application goes directly to the key Commission policies supporting Canadian programming, most notably CPE and PNI spending requirements. CPE and PNI were made the foundational supports for Canadian programming in the "Let's Talk TV" decisions³ of 2015 and this was upheld through the group-based licence renewal proceedings of 2017 and 2018. The support of Canadian programming is a—if not *the*⁴—primary objective of the *Broadcasting Act*, and CPE and PNI levels are a fundamental pillar of furthering that objective. In proposing significant reductions of both CPE and PNI, Bell is proposing the significant erosion of the broadcasting regulatory framework, to the detriment of Canadian audiences and creators, and to the sole benefit of itself.
6. In proposing an expansion of the current PNI categories as it does, Bell is effectively proposing to eliminate PNI as a concept for its group. PNI is *defined* in relation to the specific genres of drama, documentary, and certain awards shows. PNI has no meaning outside of those genres—it's meaning is essentially: a) Canadian programming, b) in the PNI genres. If you eliminate the applicability of those genres, you eliminate PNI, and are left simply with Canadian programming, but not PNI. The entire purpose of PNI is to single out these particular genres that are in need of support. As the Commission stated when it created it:

The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.⁵

² Other such applications include Corus Entertainment Inc., Application No. 2022-0946-0, and Rogers Media Inc., Application No. 2023-0373-3.

³ Broadcasting Regulatory Policy CRTC 2015-86.

⁴ The concept of Canadian programming is expressed at least a dozen times in section 3(1) of the Act, as very arguably the primary manner in which its various social and cultural objectives are given effect. Indeed, it's virtually impossible to imagine a distinct, meaningful "Canadian broadcasting system" without Canadian programming.

⁵ Broadcasting Regulatory Policy CRTC 2010-167, para. 71. The WGC notes that according to the latest CRTC Communications Market Reports Open data files, drama and comedy programs (Category 7) remained the most watched programming in Canada by a wide margin in both the English- and French-language markets (in each year from 2018 to 2021).

7. PNI was created as a foundational element of the Group-based licensing policy,⁶ it was continued in an even more central role in the “Let’s Talk TV” “Create” decision⁷ of 2015, and it was upheld through the group-based licence renewal proceedings of 2017 and 2018, including the PNI reconsideration decision in which the Governor in Council found the issue to be so vitally important that it sent it back to the Commission after the Commission had set PNI levels too low.⁸ Ironically, it was precisely the 5% PNI level that Bell proposes in this application that the Governor in Council, and ultimately the Commission, rejected, based on many if not all of the same arguments Bell presents now. Bell brings up the elimination of the genre exclusivity policy to support its request to lower its PNI obligations, for example.⁹ Again, however, the Commission has already heard and rejected these arguments, most notably in the PNI reconsideration decision.¹⁰ Killing PNI in a Part 1 application is a strike at the jugular of Canadian programming.
8. As Bell is well aware, the *Broadcasting Act* has recently been amended by Bill C-11, the *Online Streaming Act*, and the modernization of the Canadian broadcasting system following passage of Bill C-11 is now underway, pursuant to Broadcasting Notices CRTC 2023-138, -139 and -140. These Notices form part of a structural review of the regulatory framework for Canadian broadcasting, including PNI, and such a structural review is by far the most appropriate place for the Commission to consider the best way(s) for traditional broadcasters like Bell to contribute to Canadian programming, including the types to which they must contribute. It is through this process, and only this process, that regulatory equity—the very thing that broadcasters like Bell keep insisting they want in the broadcasting system—can be achieved, because it is only through a structural review that system-wide equity, taking into account all the elements of that system, can be properly considered.
9. We submit that this alone is reason enough for the Commission to dismiss Bell’s application in favour of addressing these issues at a structural level as it modernizes the Canadian broadcasting system. Bell makes several arguments in its application, however, that we will also address.
10. Bell states that, “Of the three industry sectors impacted by Bill C-11 – foreign streamers, Canadian producers, and Canadian broadcasters – it is clear that only one is in crisis: Canadian broadcasters.”¹¹ This is simply false. There are not “three industry sectors,” but a variety of stakeholders in the Canadian broadcasting system, many of whose fortunes have varied significantly. As the WGC has stated in our written submissions to Broadcasting Notice of Consultation 2023-138, as well as stated publicly via news release,¹² the aggregate earnings of the WGC’s Canadian citizen members have declined by nearly 22% in inflation-adjusted terms over the past five years. As WGC President Alex Levine stated in our news release:

⁶ Broadcasting Regulatory Policy CRTC 2010-167.

⁷ Broadcasting Regulatory Policy CRTC 2015-86.

⁸ Broadcasting Decision CRTC 2018-335.

⁹ Application of Bell, Appendix 1, Supplementary Brief, para. 53.

¹⁰ Broadcasting Decision CRTC 2018-335.

¹¹ Application of Bell, Appendix 1, Supplementary Brief, para. 4.

¹² https://www.wgc.ca/sites/default/files/resource/2023-07/Press%20release_%20Screenwriter%20earnings%20decline_WGC.pdf

These numbers demonstrate the dire straits that Canadian screenwriters find themselves in. The 22% drop in Canadian screenwriter earnings has been devastating to our members. Out of work writers are switching careers. Others are leaving the country. Our domestic industry is dying.

11. Not only is Bell *not* the only entity in crisis but Bell, properly considered, *isn't even in crisis*. Bell cherry-picks data, emphasizing the particular realities of conventional, over-the-air television while ignoring the bigger picture. Bell contrasts foreign-owned Digital Media Broadcasting Undertakings (DMBU) revenue growth over the past decade against only conventional television revenues,¹³ for some reason, ignoring discretionary service revenues or, indeed, any other revenues other than that one segment. Meanwhile, in its reporting to Bay Street investors, Bell paints a much rosier picture, stating:

Bell Media generated revenue and adjusted EBITDA growth in 2022, even as TV advertising demand across the industry slowed due to uncertain economic conditions. This is a testament to Bell Media's diversified asset mix, including a growing contribution from digital platforms, our breadth of programming and consistently high ratings for all our TV properties.¹⁴

12. Bell reports \$3.254 billion in revenues there, with growth from the previous year of 7.2%. As has been recently reported, in 2019 the median earnings for screenwriters under the WGC's jurisdiction was \$28,284. And our members don't have lucrative telecom branches to turn to when times get tough, like Bell does. In its Form 301 in this application, Bell is asked at 4.1, "Will the proposed amendment result in a change to existing financial projections?" Bell answers, "No." At 4.2, Bell is asked, "Do you consider that your proposed amendment is necessary for the financial viability of your station?" Bell answers, again, "No." In light of all this, the notion that somehow "only broadcasters are in crisis" — or even that Bell truly is — is frankly insulting.
13. Moreover, we note that the regulated Bell Media English-language Designated Group had profit before interest and tax (PBIT) of \$162.6 million in the broadcast year ended August 31, 2022. All of Bell Media's English-language regulated television services (including mainstream news and sports services) had PBIT of \$303.3 million in 2022. Simply put, Bell Media as a whole is not in crisis.
14. Bell's proposal to direct 100% of their current PNI expenditure requirements to independent production companies is not a meaningful *quid pro quo* and provides the members of the WGC with no benefit. In fact, Bell already has the ability to direct 100% of their PNI expenditures to independent producers. Bell's current condition of licence requiring that 75% of PNI spending be directed to independent producers is a floor, not a ceiling. Bell has indeed exceeded this requirement over the past five years, averaging 87% from 2018 to 2022.¹⁵
15. Any incremental benefit to independent production companies would accrue to those companies alone. The creators of PNI programming, including Canadian screenwriters, would be severely

¹³ Application of Bell, Appendix 1, Supplementary Brief, para. 16.

¹⁴ BCE Inc. Annual Financial Report 2022, 5.3, pg. 62 (<https://www.bce.ca/investors/AR-2022/2022-bce-annual-financial-report.pdf>).

¹⁵ Bell Media English-language Designated Group Aggregated Annual Returns.

damaged by the decision to effectively eliminate the requirement for any scripted programming at Bell. Bell is offering nothing to those creators.

16. Bell also follows other broadcasters in seeking to pit one type of important Canadian programming against another, notably with respect to news and information programming. This is becoming a well-worn tactic for broadcasters, with Corus and Rogers also doing the same. It was notably tried in the context of Broadcasting Notice of Consultation CRTC 2020-336, *Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic*. In its decision in that proceeding, the Commission stated:

Rogers Media Inc. (Rogers) stated that it wishes to redirect, by the end of its licence term (i.e., 31 August 2022), shortfall amounts relating to PNI expenditures and contributions to FACTOR from the 2019-2020 broadcast year to news and information programs. In support of its proposal, Rogers explained that this would, among other things, allow it to continue producing quality news and information content, which is consistent with the Commission's third expected outcome relating to the maintenance of news and information programming.

The CMPA and the WGC opposed Rogers' proposal because it unfairly positions one type of important Canadian programming against another. The WGC added that Rogers benefits from the current flexibility for supporting news programming and from the synergies of a vertically integrated entity, and has the lowest PNI expenditure threshold of any English-language group (5%).

The Commission notes that although Rogers' proposal would meet the third expected outcome set out in the Notice (i.e., the maintenance of news and information programming), it would come at the expense of supporting the production of PNI, the primary vehicle for conveying Canadian values and stories. Accepting Rogers' proposal would also imply that the Commission is prioritizing one type of Canadian programming (news programs) over another (PNI), whereas both types, as noted by the CMPA and the WGC, are important and essential for the support of the policy objectives of the Act.

Consequently, the Commission considers that it would not be appropriate to adopt Rogers' proposal.¹⁶

17. Yet here Bell is, making essentially the same arguments. We submit that these arguments were poor in relation to the COVID-19 regulatory relief proceeding, and they are poor now. At least then, Rogers actually appeared to be making commitments with respect to news and information programming. In the present application, Bell is *not* committing to divert PNI spending into news.¹⁷ Bell devotes nearly two pages to talking about "The Perilous State of Local News,"¹⁸ but then goes to *propose nothing to*

¹⁶ Broadcasting Decision CRTC 2021-274, at para. 86.

¹⁷ Bell proposes to expand flexibility on spending otherwise dedicated to PNI to, "include programming categories 2(a) Analysis and interpretation, 8(a) Music and dance other than music video programs or clips, 9 Variety, 10 Game shows, and 11(a) General entertainment and human interest, and 11(b) Reality television."

¹⁸ Application of Bell, Appendix 1, Supplementary Brief, paras. 34-39.

improve it. Not only that, but Bell also says they are filing a separate application to reduce their news obligations as well!¹⁹

18. As other broadcasters also do, Bell cites the well-known fact that until now, traditional Canadian broadcasters have been regulated to support Canadian programming while online undertakings have not. There is nothing new here. It may indeed be regrettable that the *Online Streaming Act* has taken the time it has to become law, but now it is and the solution to the issue of “two-tiered regulation” is at hand, as the Commission addresses it through the structural process begun by Broadcasting Notices CRTC 2023-138, -139 and -140. This structural approach—launched quickly, just weeks after the passage of C-11, and proceeding at an ambitious pace—is by far the more appropriate forum to consider these matters.
19. Bell’s attempt to argue for a reduction for CPE is so obviously duplicative of that structural process that Bell is duplicating the same report, the “Armstrong Report”,²⁰ in both proceedings, effectively making all the same arguments in this regard twice. As such, the WGC has written the following passage for both proceedings, and is copy-pasting it into both, because we are effectively now forced to make all these same arguments twice in two parallel processes.
20. The WGC does not agree with the findings of the Armstrong Report, and considers the report to be deeply misleading and flawed. The report combines all “Canadian Linear CPE” together and, in the process, obscures differences and distinctions within that category that Commission policies have recognized for decades. In combining English and French CPE, the Armstrong Report ignores the “protection” that the French language affords against English-language, largely American content. It makes no sense for Bell to provide a report that deals with the entire Canadian traditional broadcasting sector, English and French, in an application for one company, itself, which operates in English. And, in combining mainstream sports CPE with other CPE, the report ignores the broad popularity and profitability of sports programming, which the Commission has recognized means that sports channels should be excluded from the group-based model.²¹ Indeed, the report states that, “for this analysis, it is assumed that even if the CPE requirement for all Canadian television programming services were to be reduced to 20% of previous year revenues...some Canadian television programming services would be unlikely to implement such a reduction,” and that these services are as would be expected, namely, “French-language private conventional and discretionary services and English-language mainstream news and sports services.”²² As such, the report acknowledges that the model would be depriving of support the services and genres that need it. Most notably of all, the Armstrong Report makes no allowances for PNI. This is striking given that Bell’s application is to effectively gut the PNI policy and eliminate it as a meaningful category.
21. From our perspective, the Armstrong Report is an admission that Bell plans to undermine support for the genres and services that are most in need of regulatory support, particularly PNI, while pointing

¹⁹ Application of Bell, Appendix 1, Supplementary Brief, para. 10.

²⁰ Application of Bell, Appendix 1, Supplementary Brief, para. 47.

²¹ See Broadcasting Regulatory Policy CRTC 2010-167, paras 120-121. The Commission said, “mainstream sports and national news specialty services do not require regulatory support as these services currently have among the highest levels of CPE and exhibition of Canadian programming.”

²² Application of Bell, Appendix 3, Canadian Programming Expenditure and Contribution Model, Methodology Note 3.

to the continued existence of genres and services that are least in need of support as if that's a success story. It's not a success story. It's a prescription for the extinction of PNI on Canadian broadcasting services, and a nail in the coffin of Canadian creators, particularly Canadian screenwriters.

22. Bell Media is a multi-billion-dollar company. They presumably have an entire regulatory department dedicated to this issue, with multiple staff, including legal staff, who can prepare this application—and many more, no doubt—with which to fill the Commission's Part 1 processes webpage. Together with Rogers, Corus, and other broadcasters, the traditional broadcasting sector could indeed deluge the space with duplicative processes, overwhelming the resources of organizations like the WGC to respond to repeated applications to rethink the regulatory framework multiple times in multiple places. One would hope that such is not their conscious strategy. But in any event, it would be the effect. Which is why it makes eminent sense to dismiss this application and instead consider these issues in a structural hearing, as the Commission is already doing.
23. For an application that goes to the very heart of the social, cultural, and economic objectives of the *Broadcasting Act*, Bell makes no mention of them anywhere in its application. Bell is clearly interested in the technical workings of section 11.1 of the Act,²³ and a cherry-picked rendition of the draft Policy Direction²⁴ that represents approximately 6% of that text, but there is no broader discussion of the objectives of the Act and how this proposal fits with them. It is an entirely unserious treatment of this vital subject, and a good example of why such issues should not be dealt with, piecemeal, in Part 1 applications generally.
24. Canadian broadcasters have already received significant regulatory relief through the elimination of Part II licence fees to the Commission,²⁵ valued at over \$120 million.²⁶ CPE and PNI obligations already self-adjust to the financial fortunes of broadcasters, since they are expressed as a percentage of gross revenues of the previous broadcast year. This means that revenue declines have *automatically* translated into lower spending obligations, as a matter of course. And the Commission has already said that, "regulated entities will remain subject to the same requirements to which they were bound prior to the coming into force of the current *Broadcasting Act*,"²⁷ and, "existing contributions by traditional broadcasters will not change as a result of Step 1, but will form part of the Step 2 discussion."²⁸
25. For all of these reasons, the WGC submits that the Commission should deny this application by Bell, and focus instead on resolving the structural issues raised in this application through the structural process that the Commission has already initiated.

²³ Application of Bell, Appendix 1, Supplementary Brief, para. 56.

²⁴ Application of Bell, Appendix 1, Supplementary Brief, para. 54.

²⁵ *Broadcasting Act*, section 11(3.1).

²⁶ In Broadcasting Order CRTC 2022-295, *Broadcasting Licence Fees – Part II*, the Commission set Part II licence fees at \$123,706,535 for 2022.

²⁷ Broadcasting Information Bulletin CRTC 2023-137, *Guidance on the current Broadcasting Act and the transitional provisions of the Online Streaming Act*, para. 4.

²⁸ Broadcasting Notice of Consultation CRTC 2023-138, para. 54.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Neal McDougall', written in a cursive style.

Neal McDougall
Assistant Executive Director, WGC

Cc: David Spodek, Senior Specialist, Regulatory Affairs (david.spodek@bellmedia.ca)
Victoria Shen, Executive Director, WGC
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