Via *GCKey*

November 17, 2022

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

Dear Mr. Doucet:

Re: Part 1 application to amend conditions of licences applicable to Corus Entertainment Inc. ("Corus") English- and French-language television groups — Appendix 1, Supplementary Brief

Introduction

1. Corus applies here under Part 1 of the Canadian Radio-television and Telecommunications Rules of Practice and Procedure to amend certain conditions of licence applicable to our English- and French-language television stations and discretionary services. The conditions in question were established in Broadcasting Decisions CRTC 2017-150 ("**BD 2017-150**"), CRTC 2018-334-1 ("**BD 2018-334-1**") and CRTC 2018-335 ("**BD 2018-335**").

2. On July 4, 2022, the Canadian Radio-television and Telecommunications Commission's ("**CRTC**" or "**Commission**") administratively renewed Corus' English- and French-language television licences for two years on the same conditions.[1] However, Corus did not request renewal of our licences on the same conditions and, unfortunately, the decision represents a harmful and unfair outcome for our company.

3. Specifically, it ensures obligations that were based on now outdated market realities, and intended to be temporary, will remain in effect for at least two more years. It ensures we will continue to carry hundreds of millions of dollars in annual regulatory obligations without a formal opportunity to weigh in on their appropriateness.

4. At the same time, our larger over-the-top ("**OTT**") competitors will continue to have no regulatory obligations whatsoever. While proposed revisions to the Broadcasting Act are designed to bring OTT services into the regulated system,

[1] Broadcasting Decision CRTC 2022-180.

it will likely take years to fully implement a new framework. The administrative renewal of Corus' licence conditions will extend, and thus exacerbate, our competitive disadvantages with Disney+ (Disney), Apple TV+ (Apple), Paramount+ (Viacom), Hayu (NBC Universal) and Discovery+ (Warner Bros. Discovery) DAZN, BritBox, Acorn TV, Fubo TV and other new entrants during that multi-year period.

5. In parallel, Corus has lost (or stands to lose) financial resources that supported our Canadian programming obligations over the last licence term, including local expression funds from Shaw Communications Inc. ("**Shaw**") and performance envelope funds from the Canada Media Fund ("**CMF**"). Rising foreign programming costs, declining BDU subscriptions, continued audience fragmentation and significant pressures on advertising revenues have also greatly changed our operating environment since our last full licence renewal.

6. To mitigate the harmful and unfair impacts of the July 2022 administrative renewal and address other changes that have emerged since our last full renewal, Corus requests the following amendments to our English- and French-language television group conditions of licence:

   - Restoring Programs of National Interest ("**PNI**") expenditure requirements on the English-language licences[2] to the 5 percent level established in Broadcasting Decision CRTC 2017-150 ("**BD 2017-150**")[3]

   - Reducing Canadian Programming Expenditure ("**CPE**") requirements on the English-language licences[4] to 25 percent of prior year's revenues

   - Discontinuing the temporary obligation on the English-language licences to direct 0.17 percent of previous year's revenues to the Foundation Assisting Canadian Talent on Recordings ("**FACTOR**")[5]

   - Discontinuing the temporary obligation on the French-language licences to direct 0.17 percent of previous year's revenues to Musicaction[6]

7. To support this application, we will elaborate on the following below:

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[2] Appendix to Broadcasting Decision CRTC 2018-335.
[3] Broadcasting Decision CRTC 2017-150, Appendix 2, condition of licence #7, and Appendix 3, condition of licence #7, as amended by Appendix to Broadcasting Decision CRTC 2018-335.
[4] Broadcasting Decision CRTC 2017-150, Appendix 2, condition of licence #2, and Appendix 3, condition of licence #3.
[5] Appendix to Broadcasting Decision CRTC 2018-335.
[6] Appendix to Broadcasting Decision CRTC 2018-334-1.

- Background on the 2017 licence renewal and 2018 reconsideration decisions
- The impact of the July 2022 administrative renewal on Corus
- Why current programming expenditure requirements are out of step with today's broadcasting environment
- Why restoring PNI expenditure requirements to 2017 levels is justified
- Why reducing Corus' CPE level will promote fairness and continued investment in local news
- Why temporary contributions to FACTOR and Musicaction should terminate on schedule

The amendments Corus seeks in this application would constitute interim relief. They would not represent mid-term licence changes but rather transitional provisions until the CRTC can conduct a comprehensive review of our licensing framework, a process whose timing is uncertain.

8. We take our obligations to the broadcasting system very seriously. Corus is proud to be a Canadian company that supports Canadian programming, news journalism and employment, and we want to do so long into the future. However, absent extensive regulatory changes that yield more operational and financial flexibility, we fear we will be unable to do so.

Background on the 2017 licence renewal and 2018 reconsideration decisions

9. On May 15, 2017, the CRTC renewed Corus' and the other large English- and French-language groups' television licenses until August 31, 2022 ("**Renewal Decisions**").[7] In the Renewal Decisions, the CRTC established standard CPE requirements of 30 percent of prior year's gross revenues and PNI expenditure requirements of 5 percent of prior year's gross revenues for the English-language groups. A standard CPE level was meant to give "the groups the ability to compete on an equal footing and to adapt in a more competitive marketplace."[8]

10. Various unions, guilds, and associations then appealed the Renewal Decisions to the Governor in Council, who ultimately referred them back to the Commission for reconsideration. The Commission was directed to consider how

[7] Broadcasting Decision CRTC 2017-148.
[8] *Ibid*, para. 28.

to ensure significant contributions to the creation and presentation of PNI, music programming, short films, and short-form documentaries.[9]

11. On August 30, 2018, the CRTC released its reconsideration of the Renewal Decisions ("**BD 2018-334**" and "**BD 2018-335**"). In those decisions, it increased Corus and Bell Media Inc.'s ("**Bell**") English-language groups' PNI requirements for the final four years of their licence terms. Instead of 5 percent of prior year's gross revenues, Corus and Bell were required to spend 8.5 percent and 7.5 percent of gross revenues, respectively. Rogers Media Inc. ("**Rogers**") remained obligated to spend 5 percent on PNI.[10]

12. In addition, the Commission required all large English-language television groups to allocate 0.17 percent of prior year's gross revenues (as a sub-category of CPE) to FACTOR to temporarily support the production of music video clips and music programming.[11] It required the large French-language groups to make equivalent temporary allocations to Musicaction.[12]

The impact of the July 2022 administrative renewal on Corus

13. On July 4, 2022, the Commission administratively renewed Corus' English- and French-language television licences for two years on the same conditions.[13] Corus was not provided a formal opportunity to weigh in on the continued appropriateness of these renewed obligations even though we regard many of them to be problematic. Indeed, we have expressed concerns about these conditions on multiple occasions,[14] and even shared reservations about the prospect of extending them beyond August 31, 2022, in previous proceedings.[15]

14. The Government of Canada is seeking to amend the Broadcasting Act through Bill C-11. Once those amendments come into force, the Government plans to issue a policy direction requiring the CRTC to establish expenditure obligations for OTT broadcasting services, and revisit Canadian broadcasters' regulatory obligations, among other things. Corus appreciates these forthcoming processes would overlap with consideration of our future licence (or service) conditions, and the July 2022 administrative renewal presented an expedient way for the CRTC to manage those competing priorities. However,

[9] Order in Council P.C. 2017-160, August 14, 2017.
[10] Broadcasting Decision CRTC 2018-335.
[11] *Ibid.*
[12] Broadcasting Decision CRTC 2018-334.
[13] *Supra*, note 1.
[14] For example, Reply of Corus Entertainment Inc. in Application 2019-0957-4, November 14, 2019, para 59; and Phase II Comments of Corus Entertainment Inc in Broadcasting Notice of Consultation CRTC 2017-359, February 13, 2018.
[15] Intervention of Corus Entertainment Inc. in Broadcasting Notice of Consultation CRTC 2020-336, October 19, 2020, para 44.

the July 2022 decision has unfortunately created a harmful and unfair outcome for our company.

15. The administrative renewal ensures conditions that were based on now outdated market realities, and were intended to be temporary, will remain in effect for at least two more years. It ensures Corus will continue to carry hundreds of millions of dollars in annual regulatory obligations while our larger digital broadcasting competitors carry none.

16. All of this exacerbates our existing competitive disadvantages with foreign digital and streaming companies. OTT services are not required to make expenditures on Canadian programming, let alone specific programing genres. While the revisions to the Broadcasting Act are designed to bring these services into the regulated system, it will likely take years to fully complete that process. The July 2022 administrative renewal effectively extend the unfair advantage that foreign services enjoy over licensed Canadian broadcasters for at least another two years.

17. In addition, it ensures Corus will continue to have higher obligations than our domestic, English-language television competitors (Rogers and Bell), who have lower aggregate PNI and independent production requirements and larger balance sheets. And, as discussed further below, the other large English- and French-language television groups will continue to benefit from transfers from their BDU divisions to support local news, while Corus stands to lose access to our current local expression funding.

18. At the same time, Corus continues to grapple with CPE under-expenditures attributable to COVID-related production shutdowns, which were beyond our control, but the CRTC required us to make up nonetheless.[16] As a result, Corus has been forced to greenlight more Canadian programs than we require or the market demands. This is limiting our financial and strategic flexibility against the backdrop of challenging, unpredictable economic conditions.

19. Historically, the Canadian media landscape changed gradually, and regulatory obligations remained mostly static. As a result, extending a licence term by a year or two did not impact a licensee's operations. However, today's broadcasting environment is more disrupted, competitive, capital intensive, and unpredictable. At a time when global media giants are investing billions to launch new OTT services and pivoting quickly to write off hundreds of millions on those investments based on strategy changes,[17] media companies must have flexibility to respond quickly to changing circumstances.

[16] See Broadcasting Decision CRTC 2021-274.
[17] Oliver Darcy and Brian Stelter, "CNN+ will shut down at the end of April," *CNN,* April 21, 2022. https://www.cnn.com/2022/04/21/media/cnn-shutting-down/index.html.

Unfortunately, Corus does not enjoy that operational, strategic, and financial flexibility under the conditions the Commission extended in July 2022.

20. To mitigate the harm and unfairness caused by the July administrative renewal, we request the amendments to our conditions of licence listed above. It is important to highlight that Corus is not seeking relief from our regulatory conditions mid-term. The five-year period for which they were intended to apply expired on August 31, 2022. It is standard practice to review regulatory requirements in full at licence renewal. This is an application for limited, transitional provisions and interim relief until the Commission can conduct a full renewal process.

Current programming expenditure requirements are out of step with today's broadcasting environment

21. At the time of the Renewal Decisions and their reconsideration, policy changes stemming from Let's Talk TV[18] had not been fully implemented. Small, pre-assembled packages, pick-packs and standalone distribution had not yet been rolled out across the industry, and access rights for services owned by the large television groups had not yet been removed. Additionally, cord cutting was less pronounced, the only streaming service with a significant number of Canadian subscribers was Netflix, foreign programming costs were stable, and COVID-19 was two years away. Since then, the television landscape has utterly transformed, and Canadian broadcasters are in a more challenging position.

22. Case in point, over one million fewer Canadians subscribe to traditional broadcasting distribution undertakings ("**BDU**") in 2022 than did in 2018,[19] and total, season-to-date, Fall 2022 viewing levels for English-language television are down 8 percent over the previous year.[20] These trends are being driven largely by Canadians' unfettered access to OTT streaming products. Beyond Netflix and Amazon Prime Video (which launched in late 2016), services from U.S. entertainment giants like Disney+ (Disney), Apple TV+ (Apple), Paramount+ (Viacom), Hayu (NBC Universal) and Discovery+ (Warner Bros. Discovery) have all launched in Canada since 2018. Additional niche services like DAZN, BritBox, Acorn TV and Fubo TV also entered the Canadian market during that period.

23. These OTT platforms compete with Canadian broadcasters for the same subscribers, programming acquisitions and related rights but are subject to none of the same regulatory obligations. Many OTT services also import brands

[18] See Broadcasting Regulatory Policies CRTC 2015-86 and CRTC 2015-96.
[19] See CRTC 2021 Communications Monitoring Report, Current Trends – Broadcasting.
[20] Numeris PPM Data, Total Canada, AMA(000), Fall'22 STD (Aug 29/22 – Oct 2/22), vs. Fall'21 STD (Aug 30/21 – Oct 3/21) – confirmed up to Sept 25/22, M-Su 2a-2a. A25-54, Total TV English, Core primetime = 8p-11p.

and programs that licensed broadcasters offer within the regulated system. For example, Hayu – available OTT, and on most BDU platforms – offers many of the same programs that are available on Slice, a licensed, Corus-owned discretionary service.

24. While Canadians have flocked to OTT platforms, advertisers have diverted television advertising spending to digital media. Even before the COVID-19 pandemic began impacting Canada in March 2020, traditional media advertising revenues had flatlined or were in decline. Between 2018 and 2020, advertising revenues for private conventional television stations, discretionary services and on-demand services declined by nearly 12 percent.[21] And, as the Commission has observed, COVID-19 devastated advertising spending on broadcast media.[22]

25. Unfortunately, the broadcasting industry has not fully recovered. The macroeconomic environment became increasingly uncertain in the fourth quarter of the 2022 broadcasting year, characterized by high inflation and supply chain constraints. As a result, advertising demand and spending across the media industry contracted meaningfully[23] and we find ourselves amidst an advertising recession. We do not know the depth or duration of this contraction but presently expect it to persist to some degree into the 2023 broadcast year.

26. To be sure, economic shifts, viewership and subscriber declines since the Renewal Decisions have significantly impacted Canadian television services' financial performance, and the declines are worse than anticipated. For example, as part of the 2017-2018 Renewal Decision reconsideration process, Corus filed revenue projections for the 2017-2018, 2018-2019, 2019-2020 and 2020-2021 broadcasting years. Our actual English-language group revenues (aggregate discretionary and conventional) were roughly 4 percent, 1 percent, 11 percent, and 11 percent lower than projected in the four years, respectively, representing roughly $386 million less aggregate revenue than projected for the four years.[24]

27. Financial results from Corus' recently completed financial quarter reflect a challenging and rapidly evolving economic landscape for which the administrative renewal does not account. For example, Corus' television

[21] Communications Market Reports, Annual highlights of the broadcasting sector 2019-2020, Figure 16.
[22] 2019-2020 CRTC Communications and Monitoring Report, Annual highlights of the broadcasting sector 2019-2020, Revenue Performance.
[23] Standard Media Index reported a 12 percent decline in the United States advertising economy (cross media) in July over the previous year, and 40 percent decline in linear television advertising over the previous year. See U.S. SMI Core Release Note – July 2022 (https://www.standardmediaindex.com/insights/u-s-smi-core-release-note-july-2022/).
[24] See Filing of Corus Entertainment Inc. in Broadcasting Notice of Consultation CRTC 2017-429, December 8, 2017, Appendices 6 and 7. See also Aggregate Annual Returns for Corus Entertainment Inc. for 2018, 2019, 2020 and 2021 broadcasting years.

segment revenue for the fourth quarter of the 2022 broadcasting year decreased 6 percent from the prior year's quarter, advertising revenues decreased 14 percent and segment profit decreased 46 percent.[25]

28. At the same time, foreign programming costs – among Canadian broadcasters' largest expenses – are increasing sharply. Long a staple of Canadian private broadcasters' business model, and the Canadian broadcasting system that relies on them, discrete Canadian territorial rights to foreign programming have become scarcer and more expensive since 2018. For example, Corus' foreign programming costs for the 2022 broadcasting year were over 12 percent higher than the 2019 broadcasting year, with a compound annual growth rate of nearly 4 percent. Other broadcasters are reporting similar trends. [26]

29. Canadian program spending requirements established in the Renewal Decisions and their reconsideration continue to assume that licenced Canadian broadcasters enjoy a dominant share of Canadian viewing audiences. Recent data demonstrates this is not the case,[27] yet the July 2022 administrative renewal ensures these requirements will continue for at least two more years.

30. Most Canadian programming earns substantially smaller margins – if any – than investments in foreign programming, and it has long been the case that "profits from non-Canadian (primarily U.S.) programs are … used to cross-subsidize required investments in Canadian programming."[28] However, as foreign program rights become more expensive and harder to obtain, this cross-subsidy model will become increasingly challenged.

31. In Harnessing Change, the CRTC noted challenges to the cross-subsidy model but predicted "longstanding business relationships and long-term content supply agreements between U.S. rights holders and their global partners may slow this practice."[29] This is true to some extent, and Corus is proud to maintain relationships with major U.S. studios and broadcasters. But it is also true that it will cost us more to remain in these partnerships going forward. Notably, some of these same partners have launched competing, unregulated OTT products in the Canadian market and consolidation among American studio content suppliers have given foreign program suppliers unprecedented

[25] Corus Entertainment Inc., Fiscal 2022 Fourth Quarter, Report to Shareholders, pages 10-11.
[26] See Karine Moses and Rob Malcomson, "Here's how Bill C-11 can ensure the survival of Canada's private broadcasters," Toronto Star, June 4, 2022, https://www.thestar.com/business/opinion/2022/06/04/heres-how-bill-c-11-can-ensure-the-survival-of-canadas-private-broadcasters.html
[27] "Close to 1 in 5 Canadians have cut the cord on their TV service and 1 in 8 have never had a TV service," (see Media Technology Monitor, "MTM Spring 2022 Data Analyzes SVOD Account Sharing, Time Spent on TikTok and Instagram and how Canadians Discover New Music," June 30, 2022).
[28] CRTC, "Harnessing Change: The Future of Programming Distribution in Canada," May 31, 2018, Risks and Opportunities, Risk #5 ("**Harnessing Change**").
[29] *Ibid.*

leverage.[30] To effectively support any Canadian programming going forward, private Canadian broadcasters will have to increase their foreign programming budgets. Broadcasting regulations should be revisited with this fact in mind.

32. It is also important to note that content greenlit today cannot be placed on air and amortized tomorrow, and program investment decisions must thus be made months or years in advance. This places risk on broadcasters who must make financial commitments without knowledge of future economic conditions. Canadian programming spending quotas add further constraints: they are benchmarked to prior year's revenues and predicated on outdated assumptions about Canadian broadcasters' dominant market positions and revenue performance. At current levels, these obligations severely restrict broadcasters from responding nimbly to changes in audience preferences, advertiser demands, economic conditions, and revenue performance.

Restoring PNI expenditure requirements to 2017 levels is justified

PNI expenditure quotas at current levels conflict with other regulatory policies and market realities, and impair Canadian broadcasters

33. In the past, broadcasting regulations generally limited discretionary services to specific program genres. For example, travel-oriented channels were prohibited from airing history-oriented programming. As a result, the amounts broadcasters could spend on certain types of Canadian programs were dictated by their licence restrictions. The Commission eliminated this 'genre exclusivity' policy in 2015-2016.[31]

34. Concurrently, the CRTC undertook other significant regulatory reforms as part of Let's Talk TV. It phased out access rights for most channels.[32] It established open entry licensing for most types of discretionary services.[33] And it shifted broadcasting policy emphasis from mandating quantities of Canadian programming to encouraging the production of quality Canadian programming, which could better succeed at home and abroad.[34]

35. All these changes were meant to promote a more competitive and sustainable broadcasting system that served Canadian audiences. However, regulatory barriers to these valid objectives persist. Most notably, significant PNI

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[30] Andrew Willis, "Canadian television networks face rising costs for U.S. programming and potential loss of popular shows in the wake of WarnerMedia's merger with Discovery Inc.," *Globe and Mail*, May 17, 2021.
[31] See Broadcasting Regulatory Policy CRTC 2015-86, para 254.
[32] Broadcasting Regulatory Policy CRTC 2015-96, para 120.
[33] *Supra*, note 22, para 248.
[34] *Supra*, note 22.

expenditure requirements remain in place for many Canadian television licensees.

36. Indeed, these lingering requirements conflict with other regulatory policies. When the Commission raised Corus and Bell Media's PNI obligations in BD 2018-335, it benchmarked those obligations to the licensees' historical PNI spending levels even though, in the past, a channel's programming choices were dictated by conditions of licence that limited it to specific genres. Thus, a channel's actual spending did not reflect what it would have chosen to spend had it enjoyed complete strategic and scheduling discretion.

37. Unfortunately, benchmarking PNI obligations to levels established when channels had limited programming discretion has yielded anomalous outcomes. For example, today, revenues from Corus-owned channels like HGTV Canada and Food Network Canada are included when determining the 8.5 percent of previous year's gross revenues that the Corus group must direct annually to PNI, despite the fact these channels broadcast few of those types of programs. Unfortunately, the obligation forces services that do air these types of programs to devote more of their schedules to them than they might otherwise, thus limiting their ability to respond to viewer preferences, and undermining the consumer choice-driven policies at the heart of Let's Talk TV.[35]

38. Additionally, at current levels, these quotas are out of step with market realities and inhibit Canadian broadcasters. They drive unprofitable investments, which companies like Corus can ill-afford and place us at an untenable disadvantage with our larger competitors who have more capital and discretion over programming strategy.

39. The Broadcasting and Telecommunications Legislative Review Panel accurately described Canadian broadcasters' financial dilemma with these types of programs:

> In the last 40 years, Canadian broadcast policy has supported the production of Canadian television drama, although it has never made sense from an economic standpoint. Drama (including scripted comedy) is the most popular genre on television, but it is also the most expensive genre to make … to finance this, the Canadian broadcast network [must] provide a much higher licence fee commitment—**one that would exceed any expected ad revenue** [emphasis added].[36]

Put another way, most English-language Canadian produced dramas and comedies cannot generate sufficient revenues in the Canadian market to allow

[35] *Supra*, note 22.
[36] Broadcasting and Telecommunications Legislative Review Panel, "Canada's Communication Future: Time to Act," January 29, 2020, page 138.

broadcasters to fully recoup their investments in them. The economics are worsened further by additional regulations requiring broadcasters to acquire 75 percent of their dramas and comedies from independent producers.

40. Successful media companies continuously adapt to audience demands and shifting economic circumstances. For its part, the CRTC has recently echoed that regulatory tools should be “nimble, innovative and continuously capable of rapidly adapting to change.[37]” It has argued that to “best face the challenges of the future and benefit from its opportunities, it is essential to effectively adapt to these changes and enable platforms and services to do the same.”[38]

41. PNI expenditure obligations, benchmarked to historical spending levels, in effect for seven years or longer, are the antithesis of a “nimble” or “adaptable” regulatory tool. As Blue Ant Media recently observed, “as a channel operator, in light of programming expenditure requirements in our conditions of licence, we simply are not afforded the flexibility to respond to … market variables or downturns, in a way that makes the best sense for our business.”[39] Canadian broadcasters cannot be expected to “face the challenges of the future” so long as broadcasting regulations anchor us to the past.

Corus has fewer resources to support our PNI obligations today than we did in 2018

42. Financing Canadian programs has always been a multi-layered endeavor, combining broadcaster investment, tax credits, distribution advances, and contributions from funding agencies like the CMF. PNI projects are especially complex as they entail more risk and cost than other programming genres.

43. Through its Performance Envelope Program, the CMF contributes to Canadian productions through allotments of program funds, which Canadian broadcasters can trigger. To be clear, 100 percent of these funds go to the production companies of eligible projects and none of them flow to the triggering broadcasters or count against their CPE requirements. In addition, 75 percent of these funds must be allocated to independent productions.

44. In this way, CMF monies are effectively used to top up broadcaster licence fees and augment project budgets, thus increasing the resources available for eligible Canadian productions. CMF performance envelope funds are especially relevant to PNI as there is significant overlap between the Commission’s defined PNI genres and the CMF’s eligible program genres.

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[37] Harnessing Change, Conclusions and Potential Options.
[38] *Ibid.*
[39] Intervention of Blue Ant Media in Broadcasting Notice of Consultation CRTC 2020-336, October 19, 2020, para 5.

45. The year the Renewal Decisions were reconsidered, the CMF allotted $35.6 million in English-language program funds to Corus' envelope.[40] This amount remained relatively consistent for the next three years, but the CMF recently modified its funding criteria, and Corus will accordingly see our allocation decline ***by approximately $10 million (or nearly 27 percent) over 2017-2018 levels in 2022-2023.***[41] This substantial decrease will make it more difficult for us to finance scripted productions and service our PNI obligations. It will worsen the economics of our mandated PNI spending even further.

46. Moreover, Corus' English-language CMF performance envelope may decline further as the Government plans to shift a greater proportion of total funds to French-language productions,[42] and the CMF embarks on an ambitious "platform-agnostic" reform agenda, which de-emphasizes Canadian broadcaster involvement in the coming years.[43]

47. CMF funding decreases are especially difficult as we continue to grapple with CPE under-expenditures attributable to COVID-related production shutdowns, which were beyond our control, but the CRTC required us to make up nonetheless.[44] These shutdowns took place two years after the reconsideration decisions and have introduced unprecedented challenges in the years since, none of which were expected in 2018. As a result, Corus has been forced to greenlight more unprofitable Canadian programs (including PNI) than we require or the market demands.

48. It is worth emphasizing that the Commission requires CPE (of which PNI is a subset) to be recorded on an amortization basis over time. When programs cannot air – as happened during the COVID production shut down – amortization does not begin, and no expense is recorded. To simply push these expenses onto future years not only brings additional costs but rolls larger, compounding cash obligations into the next period. Corus is experiencing these impacts first-hand as we try to catch up on our COVID-related CPE underspend. That catch-up obligation has already negatively impacted our company's profitability and will continue to do so through the current broadcasting year.[45]

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[40] See 2017-2018 Performance Envelope Allocations at April 13, 2017 (https://cmf-fmc.ca/document/performance-envelope-allocations-2017-2018/)
[41] 2022-2023 Performance Envelope Allocations at April 14, 2022 (https://cmf-fmc.ca/our-programs/envelope-administration/#:~:text=On%20April%201%2C%202022%2C%2019,was%20shared%20among%20French%20broadcasters)
[42] See Mandate Letter of Hon. Minister Pablo Rodriguez, December 16, 2021.
[43] See Valarie Creighton, "Growth and Inclusion for a Better Canada – The Case for Bill C-11," April 26, 2022, https://cmf-fmc.ca/news/growth-and-inclusion-for-a-better-canada-the-case-for-bill-c11/.
[44] See Broadcasting Decision CRTC 2021-274.
[45] See Fiscal 2022 Fourth Quarter and Year-End Earnings Conference Call, slide 11.

Corus has fewer services that broadcast scripted programming than we did in 2018

45. Corus offers fewer discretionary services focused on scripted programming and documentaries than we did in 2018. In a 2020 decision considering appropriate PNI expenditure levels for another licensee, the CRTC "examined the licensees' overall broadcasting and production activities to determine what may have changed."[46] Among other things, it sought "evidence of a change in the programming approach of those services."[47] Similarly, in BD 2018-335, the CRTC considered Rogers' "composition" and "mix of assets" when it decided to maintain its PNI expenditure requirement at 5 percent.[48]

49. Since 2018, Corus has discontinued five discretionary services: Sundance, Cosmopolitan TV, FYI, IFC Canada and BBC Canada. Each of these channels devoted much of their schedules to scripted programs and documentaries. Therefore, Corus' total "mix of assets" includes a smaller proportion of PNI focused services today than it did in 2018. Maintaining PNI requirements at current levels forces Corus' remaining services to devote a greater proportion of their programming mix to scripted programming and documentaries than viewers demand, thus rendering them less competitive.

50. For the foregoing reasons, Corus requests that the PNI requirement applicable to our English-language television group be returned to the 2017 level of 5 percent. This would represent modest interim relief until the CRTC can conduct a full review of our licence conditions. It will help offset the loss of CMF performance envelope monies, account for massive industry shifts since 2017, and address competitive imbalances with larger foreign and domestic broadcasters, which the July 2022 administrative renewal will exacerbate.

Reducing Corus' CPE level will promote fairness and continued investment in local news

51. In 2016, the Commission released Broadcasting Regulatory Policy CRTC 2016-224 ("**BRP 2016-224**"), its policy framework for community and local television. The new policy allowed vertically integrated BDUs to transfer portions of funding that had historically been earmarked for community channels to local news on related or unrelated local television stations. Further, it launched the Independent Local News Fund ("**ILNF**") to support local news on independent television stations through BDU contributions.[49]

[46] BD 2020-189, para 27.
[47] *Ibid*.
[48] BD 2018-335, para 42.
[49] Broadcasting Regulatory Policy CRTC 2016-224, Policy framework for local and community television.

52. Following BRP 2016-224, Corus began receiving funds from Shaw's BDU licensees out of the pool that was previously earmarked to community programming, just as Rogers, Bell and Quebecor received funding from their related BDUs. These monies are reported as "Contributions from BDUs for the creation of locally reflective news programming" and are not included in broadcasting revenues on CRTC annual returns.

53. In the Renewal Decisions, when establishing the appropriate Canadian programming obligations for the large English-language groups, the Commission assessed the resources available to the various groups, including to support local news. As noted, it concluded that a standard 30 percent requirement would enable "the groups the ability to compete on an equal footing and to adapt in a more competitive marketplace."[50]

54. On March 24, 2022, the Commission approved Rogers' application to acquire Shaw's licensed broadcasting assets.[51] Rogers previously announced its intention to redirect Shaw's approximately $13 million annual local expression funds from Corus-owned Global TV stations to competing Rogers-owned Citytv stations. Corus raised concerns about losing these funds,[52] but the CRTC approved Rogers' plan, nonetheless. As a result, following closing, Corus will no longer receive local expression funds, and will thus no longer compete "on an equal footing" with the other large television groups, as the Commission intended in the Renewal Decisions.

55. As an independent broadcaster,[53] Corus should clearly become eligible for alternative funding from the ILNF. However, if we sought to participate in the ILNF in its current form we would stand to receive a substantial proportion of its total reserves, given the number of stations we own and the amount we spend on local news. Adding Corus stations to the ILNF would not augment the fund but intensify demand for funding, which would negatively impact other recipients and their local news offerings. The CRTC did not envision this outcome when it created the ILNF or issued the Renewal Decisions.

56. The Commission has stated an intention to review the ILNF framework[54] but this could take years. In the interim – and concurrent with the administrative renewal period – Global TV, among the largest spenders on local journalism in Canada, will operate the only local television stations in the country without access to any local expression monies, be it through affiliated BDU contributions, or ILNF funding. This would clearly be an unfair outcome.

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[50] *Supra*, Note 10.
[51] Broadcasting Decision CRTC 2022-76 ("**BD 2022-76**").
[52] Intervention of Corus Entertainment Inc., Broadcasting Notice of Consultation 2021-281, September 13, 2021, para 9.
[53] BD 2022-76, para 91.
[54] BD 2022-76, para 101.

57. The roughly $13 million in annual local expression monies Corus stands to lose represents nearly 10 percent of Global News's total annual operating budget. Cuts of this magnitude are difficult for any business segment to absorb, especially for ones that already run negative operating margins. It is very likely this budget reduction will lead to reductions in news coverage absent regulatory relief, which is why this application is so important.

58. Corus is committed to providing local Canadian programming in the communities we serve, and we take our role as a journalism organization very seriously. In an era of rising polarization and misinformation we view this work as an essential public service with immense cultural significance and want to continue doing it for many years to come. However, without some relief from our Canadian programming obligations, it will be difficult to continue supporting an unprofitable programming category like local news at current levels.

59. A five-percentage point CPE reduction would represent modest interim relief. It will help offset the loss of annual local expression monies, account for massive industry shifts since 2017, and address competitive imbalances with larger foreign and domestic broadcasters, which the July 2022 administrative renewal will exacerbate. Crucially, it will better position Corus to maintain news production at current levels until the CRTC can conduct a full review of our licence conditions.

60. Moreover, the proposed 25 percent CPE level would align with recently established requirements for another independent private broadcaster, OUTtv.[55] There, the Commission observed that a 25 percent CPE level would enable OUTtv to make "a significant contribution to the production of Canadian programming, while allowing it the flexibility to operate in a competitive environment as an independent discretionary service."[56] Corus' proposed interim CPE requirement would also be higher than the 20 percent[57] and 21 percent[58] CPE levels currently in force for Wildbrain Television and Blue Ant Media, two other private, English-language independent groups.

Temporary contributions to FACTOR and Musicaction should conclude on schedule

61. In the 2018 reconsideration decision, the Commission required the large English- and French-language television groups to direct 0.17 percent their previous broadcasting year's gross revenues to FACTOR and Musicaction,

[55] Broadcasting Decision CRTC 2022-223, para 58.
[56] *Ibid*.
[57] Broadcasting Decision CRTC 2018-228, para 25.
[58] Broadcasting Decision CRTC 2018-291, para 24.

respectively. The CRTC stated this, "should constitute ***a temporary measure, until the end of [the] current licence term***, to allow the music industry to adapt [emphasis added]."[59] It further clarified that the television sector "should not be solely responsible for providing long-term support to the music industry,"[60] and these obligations would expire on August 31, 2022.[61]

62. Undoubtedly, the pandemic negatively impacted musicians who were unable to perform live. Thankfully, governments provided them significant financial assistance.[62] Today, less music programming is available on traditional television screens than can be found on streaming services like Vevo, which describes itself as the "world's leading music video network."[63] Given music video programming is now largely consumed outside of the regulated system, it would be inappropriate to continuously require Canadian television licensees to subsidize the operations of foreign streaming platforms.

63. These two temporary obligations should accordingly be allowed to expire on schedule, and amounts paid to FACTOR and Musicaction after August 31, 2022, should be credited against Corus' CPE requirements in subsequent broadcasting years.

Licenced broadcasters' Canadian programming requirements must be comprehensively revised

64. It is important to note that even meeting the revised Canadian expenditure requirements proposed in this application will be challenging given revenue declines, programming cost increases, and rising OTT penetration. In recent years, Corus has made no secret that we will require a renewed regulatory bargain to ensure our success and continued support for the broadcasting system. With or without Bill C-11, to succeed in a borderless, capital intensive, disrupted industry, Corus and other Canadian broadcasters will need more operational and financial flexibility than current broadcasting requirements allow. We look forward to discussing these longer-term changes with the Commission soon.

[59] *Supra*, Note 5, para 58.
[60] BD 2018-334, para 51 and BD 2018-335, para 57.
[61] BD 2018-334, para 58 and BD 2018-335, para 62
[62] See https://www.newswire.ca/news-releases/emergency-support-fund-for-cultural-heritage-and-sport-organizations-next-steps-to-support-the-industry-impacted-by-the-global-covid-19-pandemic-849423174.html; See also: https://www.canada.ca/en/canadian-heritage/news/2020/07/final-components-of-phase-2-of-the-covid-19-emergency-support-fund-for-cultural-heritage-and-sport-organizations-announced.html; https://www.factor.ca/details-of-emergency-support-funding-announced-first-program-stream-now-open-for-applications/
[63] https://www.hq.vevo.com.

Conclusion

65. To address the harm and unfairness of the July 2022 administrative renewal, our loss of local expression and CMF funding, significant new financial pressures, and manifold industry changes since 2017-2018, Corus requests the amendments listed above. They would constitute modest transitional provisions and interim relief pending a comprehensive review of our licensing framework, which could take two years or longer.

66. While we appreciate the Commission must manage competing files amidst ongoing legislative and political uncertainty, our company cannot wait two years or longer for change. With every passing year, our larger, unregulated digital competitors take more of our market share. The ground we are losing today cannot be made up once the CRTC is finally able to revisit our regulatory obligations. In short, time is not working in our favour.

67. Corus is committed to serving Canadian audiences and communities, supporting Canadian journalists and other creators, and employing Canadians going forward. In the months ahead, we look forward to working with the Commission to develop a new regulatory regime that enables us to do those things long into the future.

Yours truly,

[*FILED ELECTRONICALLY*]

Matt Thompson
VP and Associate General Counsel,
Regulatory, Privacy and Public Policy
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