

March 27, 2018

**Submitted electronically**

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

Dear Mr. Doucet,

RE: Allarco Entertainment Limited Partnership's Broadcasting Licence Renewal Application for Super Channel (Application no. 2017-0743-1) – Intervention from On Screen Manitoba

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1. On Screen Manitoba (OSM) is pleased to provide the following comments with respect to the broadcasting licence renewal application for Allarco Entertainment Limited Partnership's ("Allarco") discretionary service Super Channel (Application no. 2017-0743-1). In the event a public hearing is held to address this matter, On Screen Manitoba requests to appear.
2. On Screen Manitoba is a vibrant provincial industry association that leads, builds and represents the Manitoba media production industry. Our members work in the English and French language markets and represent the cultural and linguistic diversity of the Province<sup>1</sup>. The On Screen Manitoba membership represents individuals (producers, writers, directors and other industry professionals), labour organizations (ACTRA-Manitoba, DGC-Manitoba, IATSE 856), service suppliers (material, equipment, professional services, etc.) training organizations, film festivals and other stakeholders.

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<sup>1</sup> Over 40% of Manitoba production companies are owned by women and eighteen percent of Manitoba media production companies are at least partially Indigenously owned as recorded in *WAVES: A Snapshot of Manitoba's Media Production Industry* commissioned from Nordicity by On Screen Manitoba, published January 16, 2018.

3. While On Screen Manitoba appreciates Allarco's efforts in terms of regional outreach and regional development and production, we have grave concerns about Allarco's apparent lack of compliance to its current conditions of licence (COLs).
4. The Canadian content distribution system is built on the Broadcasting Act, which recognizes the important role that each of the private broadcasters, public broadcasters and the independent media production community play in creating and distributing Canadian programming to the citizens of this country. The CRTC is responsible for overseeing this system and ensuring that the objectives of the Broadcasting Act are being achieved. This work is carried out both through the issuing of broadcasting licences with their accompanying conditions of licence (COLs) and through the review of annual reports and other mechanisms to ensure compliance with those COLs. The regulator and the contributors to the Canadian broadcasting system all play essential roles in the realization of the objectives of the Canadian Broadcasting Act.
5. Based on the information available on the public record regarding Super Channel's broadcasting licence renewal, it appears that Allarco has not met its current conditions of licence. On Screen Manitoba notes that in the previous licence term there was also significant non-compliance with COLs, and that this is the second time Allarco is in a precarious financial position due to bankruptcy protection.
6. Super Channel was perceived to be a positive addition to the Canadian broadcasting system. In what was already, and is now an even more consolidated ecosystem, Super Channel appeared to offer independent Canadian producers with increased opportunity to create and distribute original Canadian content.
7. We believe that independent private broadcasters such as Allarco can and do play an important role in ensuring original independent Canadian programming is made available to the Canadian public. The COLs that included regional outreach, script and concept development as well Canadian programming expenditure requirements seemed to position the broadcaster as one that would effectively invest in a wide range of diverse Canadian programming.
8. On Screen Manitoba deeply appreciates Super Channel's investment in the Manitoba media production industry through its cash and in-kind support of On Screen Manitoba's annual industry forum in each of 2015, 2016, 2017 and 2018.
9. While these efforts are to be commended, historic and current non-compliance with COLs combined with a precarious financial position for a second time since Allarco was first granted a licence in 2006, have had a negative impact on Canadian content production. Further, Allarco appears to function with non-industry standard business practices, which, combined with bankruptcy protection has caused financial hardship to many independent producers across Canada, some of them in Manitoba.
10. It is our understanding that the following COLs have not been met:

- a. Expend 30% of its revenue for the previous broadcast year on the acquisition of, or investment in, Canadian programs;
  - b. Expend at least \$500,000 annually on regional outreach programs as part of its CPE requirements and expend an additional \$500,000 on regional outreach programs on an annual basis until it reaches a total of \$2 million by August 31, 2017;
  - c. Expend at least \$500,000 annually on script and concept development as part of its CPE requirements; and expend an additional \$1 million on script and concept development on top of its CPE requirements on an annual basis until it reaches a total of \$4 million by August 31, 2017; and
  - d. Devote to the distribution of Canadian programs not less than: 30% of the time from 6:00 p.m. to 11:00 p.m. (Eastern time); and 25% of the remainder of the broadcast day.
11. It is our understanding that Super Channel has used non-standard business practices in their dealings with producers. These practices have resulted, generally, in Independent Canadian producers carrying a heavier debt load for a longer period of time than in standard industry deals. When Super Channel filed for bankruptcy protection, productions across the country were suddenly seriously underfinanced; and the producers, who already faced longer than average interim financing due to Super Channel's payment schedule, were forced to interim finance the outstanding portion of the Super Channel contribution. Many producers found themselves in very difficult financial situations with their bank. Over 50 documentary projects across Canada were affected. Most of the independent producers affected will only receive a fraction of the payment for the work they completed, even with the recently Alberta court approved "plan of compromise."<sup>2</sup>
12. In view of all of the above, On Screen Manitoba is in agreement with the Documentary Organization of Canada (DOC) and the Canada Media Producers Association (CMPA) and other stakeholders that the Allarco's licence renewal should be considered through a public hearing.
13. Further, On Screen Manitoba agrees with the CMPA, DOC and others that should the CRTC award a licence renewal to Allarco that:
- a. Super Channel's request to reduce its CPE from 30% to 25% should be denied. A 30% CPE is in line with TMN's (the other premium television service) CPE requirement and it is in line with

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<sup>2</sup> Pinto, Jordan, "Allarco to pay almost \$3M to affected creditors in CCAA proceedings," *Playback*, February 21, 2018, (available: <http://playbackonline.ca/2018/02/21/allarco-to-pay-almost-3m-to-affected-creditors-in-ccaa-proceedings>).

CRTC policy and objectives to ensure original independently-produced Canadian programming is made available to Canadians.

- b. Super Channel should be required as a COL to make up any shortfalls on Canadian programming expenditures, regional outreach programs, and script and concept development expenditures.
  - c. The licence period should be limited to three years with a strictly imposed transparent reporting process in place. Mandatory compliance COLs and reporting on COLs is essential to any broadcast licence, but in this instance with a history of non-compliance the CRTC has the mandate to put into action more stringent measures. Without a clearly defined transparent reporting process that is adhered to annually, the public, including industry stakeholders, cannot monitor Allarco's compliance with regard to conditions of licence.
14. In the past On Screen Manitoba emphasized in CRTC proceedings the importance of transparent, consistent, annual reporting by Broadcasters is essential to ensure that the Canadian public including industry stakeholders have access to information that demonstrates COLs are being met, that they are being met in a timely manner and that regional obligations are being met. We support annual reporting on Canadian productions that include the project title, production company, genre, length, and original language of production. We agree with DOC that including licence fee and payment schedule would also provide the public with clear information as to whether Super Channel is meeting its COLs. On Screen Manitoba would welcome any opportunity to provide feedback to the CRTC with regard to the format of annual reports from broadcasters on Canadian programming expenditure and programs of national interest. We believe that a comprehensive standardized approach to data collection would better demonstrate the contribution of independent Canadian creators to the Canadian broadcasting system.
15. We agree with DOC that the CRTC has a role to play ensuring that broadcasters adhere to standard industry practice with regard to business dealings. In the past the Terms of Trade provided producers and broadcasters with a much-needed framework for business dealings, one that considered the interests of both producers and broadcasters.
16. Finally, we agree with the COL safeguards proposed by the CMPA. We believe they take into account the challenges that Allarco is facing in a highly competitive environment while clarifying COLs with regard to CPE. For further clarity, we agree that the CRTC should
- a. Include a COL safeguard to benefit Super Channel by reminding Broadcaster Distribution Undertakings (BDUs) that Super Channel must be provided with equitable carriage relative to TMN in particular or risk being found to engage in anti-competitive behaviour.

- b. Include a COL to ensure that Super Channel limits filler programming to no more than 3% of the broadcast schedule and to ensure that Canadian programming is evenly distributed throughout the daily schedule.
17. In view of Allarco's historic and current non-compliance with COLs, its precarious financial situation and the negative impact those financial problems have had on the industry as a whole, its non-standard practice for business dealings with independent Canadian producers; and, in light of the potentially positive role that Super Channel could play as a distributor of diverse Canadian programming, On Screen Manitoba humbly submits that a public hearing is in order.
18. On Screen Manitoba appreciates the opportunity to share our comments regarding the licence renewal of Super Channel.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Matiation". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nicole Matiation  
Executive Director / *directrice générale*  
On Screen Manitoba

Cc Mark Lewis, Counsel for Allarco, Lewis Birnberg Hanet LLP, [mlewis@lbhmedialaw.com](mailto:mlewis@lbhmedialaw.com)

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