

June 3, 2019

Submitted electronically

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

Dear Mr. Doucet,

RE: CRTC 2019-127, *Notice of hearing*, item 1: Allarco Entertainment Limited Partnership's
Broadcasting Licence Renewal Application for Super Channel (Application no. 2017-0743-1)

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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).
 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 Province¹. 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.
 3. On Screen Manitoba believes that Super Channel has, and could continue to play, an important role in the development, production and exhibition of independently produced Canadian programming. In our past two interventions on this matter we have suggested that a public hearing was required to fully examine Allarco's application and determine how to best to address its apparent non-compliance under its current licence along with any future conditions of licence under a licence renewal.
 4. On Screen Manitoba thanks the Commission for calling a hearing in regard to Allarco's request for a licence renewal for Super Channel. On Screen Manitoba notes that many intervenors, including

¹ 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.

Allarco, believe an oral public hearing would be in the best interests of the public. In the event an oral public hearing is held to address this matter, On Screen Manitoba requests to appear.

5. Having reviewed the information recently added to the public record by Allarco and other intervenors, On Screen Manitoba remains gravely concerned by Allarco's apparent lack of compliance to its current conditions of licence (COLs) for Super Channel. It appears that Allarco is in non-compliance with Super Channel's COLs, including COL 3 relating to the distribution of Canadian programs, COL 5 relating to the eligibility and late payment of Canadian programming expenditures (CPE), COL 6 relating to the eligibility of certain expenditures devoted to regional outreach programs COL 7 relating to the eligibility and late payment of certain expenditures devoted to script and concept development, and COL 8 relating to the eligibility and late payment of certain expenditures devoted to regional outreach programs and script and concept development.
6. Further, we note that the Commission expressed grave concern with Allarco's non-compliance to COLs during the last licence renewal process.² The CRTC is responsible for overseeing the Canadian broadcasting system to ensure the objectives of the Canadian Broadcasting Act are achieved. This work is carried out through a variety of mechanisms including licencing of broadcasters, annual reporting by broadcastings, public hearings and other mechanisms to ensure all components of the Canadian broadcasting system contribute to its success. At the same time, each component has responsibilities to ensure that success. As the Commission noted in its recent decision 2019-109, a Broadcast licence "is a privilege, not a right."
7. The Canadian broadcasting system has become highly concentrated with just three large private groups operating in the English language market; Super Channel has and could continue to offer independent Canadian producers with increased opportunity to create and distribute original Canadian content, but it must comply with the COLs from both its previous licence and any new licences awarded by the CRTC.
8. 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 third time in a ten-year period that Allarco is in a precarious financial position due to bankruptcy protection. In light of all of this information, On Screen Manitoba is in agreement with the CMPA that a mandatory order under section 12 of the *Broadcasting Act* (the Act) requiring the licensee to comply with its COLs and the *Discretionary Services Regulations* is necessary to address Allarco's non-compliance.
9. On Screen Manitoba deeply appreciates Super Channel's investment in the Manitoba media production industry through its cash support of On Screen Manitoba's annual industry forum in each of 2015, 2016, 2017, 2018 and 2019. We look forward to the opportunity to work with Super Channel in the future. We believe that there is real opportunity for the development and production of high quality independent original Canadian programming in all regions of Canada. Super Channel's past investments in the development and production of programming with regionally-based creators

² Broadcasting Decision CRTC 2013-468

has proven successful. We believe there is real opportunity for the future but Super Channel must be held accountable and meet its previous responsibilities as set out in its current licence as well as those that may be set out in future licences.

10. In approving any new licence for Super Channel, On Screen Manitoba asks the CRTC to include a COL that Super Channel must fulfill any remaining obligations under its current licence. Based on the information available on the public record it appears that Super Channel is non-compliant in regard to five COLs (3, 5, 6, 7 and 8).

Distribution of Canadian Programs (Condition of Licence 3)

11. In regard to COL 3, On Screen Manitoba supports the position of the CMPA described in their intervention dated March 27, 2018. We agree that filler programming is not Canadian programming for the purposes of this COL, nor can filler or promotional material of foreign productions using primarily existing footage of such productions be considered Canadian programming even if it is assembled and edited in Canada.
12. We also agree with the CMPA that as a further safeguard Allarco should be required to broadcast Canadian programming evenly throughout the broadcast day. This is a common requirement of the CRTC and reasonable expectation that allows the broadcaster flexibility and ensures the Canadian public will have access to Canadian programming during prime time viewing hours and throughout the broadcast day.

Canadian Programming Expenditures (Condition of Licence 5)

13. It remains unclear whether Allarco has indeed met the 30% Canadian Programming Expenditure (CPE) COL of its licence ending August 31, 2017.
14. On Screen Manitoba supports Allarco's proposal to maintain Super Channel's current 30% CPE requirement should its licence be renewed; however, we ask that the CRTC require the licensee to make up any CPE shortfall under the current licence within the term of its new licence.

Regional Outreach Programs (Conditions of Licence 6 and 8)

15. Allarco indicates that it has met COLS 6 and 8, regarding expenditures on regional outreach programs under its current licence term; however, Allarco has included expenses from 2017-2018 along with "indirect staff costs" in its calculation of expenditures for regional outreach programs in regard to COL 6. In fact, more than half of the total expenditures claimed for regional outreach programs were directed towards Super Channel employee salaries. These are expenses that Super Channel would have to pay in the course of normal operations. The Commission intended that the \$500,000 in annual expenditure on regional outreach contribute to enriching and stimulating regionally-based production above and beyond normal operating costs.
16. On Screen Manitoba would also like to note that travel to industry events to meet with regionally-based producers are "normal" costs of doing business in a country as large as Canada where there is a commitment, if not an obligation, to seek and support the development, production and exhibition of Canadian programming from all regions of the country and that reflects the diversity of Canada's

population. On Screen Manitoba asks the CRTC to confirm that the licensee cannot include normal operating costs in its calculation of expenditures on regional outreach programs.

17. On Screen Manitoba is left with the perception that Allarco did not meet the COLs 6 and 8 for regional outreach programs.
18. Should the CRTC determine to renew Super Channel's licence, then On Screen Manitoba asks the CRTC to require that Allarco make up any shortfall in regard to the regional outreach program expenditures not met by August 31, 2017 and impose a new COL requiring \$500,000 in annual expenditures. Further, On Screen Manitoba humbly requests that the Commission encourage Super Channel to consult and work in collaboration with provincial industry associations to develop and determine meaningful regional outreach programs on an annual basis throughout any new licence term.

Script and Concept Development (Conditions of Licence 7 and 8)

19. Allarco indicates that it has met script and development COLs 7 and 8, which require an actual cash outlay; however, Allarco's calculations appear to include loans to producers. As noted in CRTC Broadcasting Decision 1993-93 "loans by broadcasters to assist the financing of Canadian productions are not eligible for the purposes of the formula." In Broadcasting Decision 2013-468, the Commission clearly expressed that "expend" and "expenditure" referred to actual cash outlay. On Screen Manitoba supports the CMPA in their submission that:
 - a. Allarco failed to achieve COLs 7 and 8 relating to script and concept development;
 - b. Allarco should be directed not to include loans in its expenditures on script and concept development; and,
 - c. Any new licence for Allarco should include:
 - i. A COL to make up any shortfall of expenditures relating to script and concept development (COLs 7 and 8) under the licence term ending August 31, 2017; and,
 - ii. A COL to expend at least \$500,000 per year on script and concept development within the term of the new licence.
20. We understand that running a Broadcaster is a challenging business; but as noted above, holding a broadcast licence is a privilege, not a right. With privilege comes responsibility. In light of Allarco's past history, and apparent ongoing non-compliance with its conditions of licence; coupled with its repeated financial difficulties, which have resulted in several filings under the *Companies' Creditors Arrangement Act* (CCAA) over a ten year period, On Screen Manitoba agrees with the CMPA that it is reasonable for the Commission to request a financial plan of Allarco to demonstrate how it will meet past and future COLs.
21. Should the CRTC determine through a public hearing to provide a licence renewal to Super Channel, then On Screen Manitoba humbly requests that the CRTC:
 - a. Grant a short-term licence renewal of no more than three years;

- b. Impose a COL that any remaining shortfall expenditures relating to COLs 5, 6, 7, and 8 (of the licence term ending August 31, 2017) be made in the new licence term;
 - c. Issue a mandatory order to comply with its COLs;
 - d. Maintain COL 5 that the licensee shall expend, on the acquisition of, or investment in, Canadian programs, 30% of its revenue for the previous broadcast year;
 - e. Maintain COL 6 that included in the expenditures required under COL 5, the licensee shall expend on regional outreach programs at least \$500,000 in each broadcast year;
 - f. Maintain COL 7 that included in the expenditures required under COL 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;
 - g. Direct Allarco that it is not permitted to include “indirect staff costs” and other “normal” costs of doing business or other ineligible expenditures for the purposes of fulfilling COL 6 or loans and other ineligible expenditures for the purposes of fulfilling COL 7;
 - h. Direct Allarco that filler programming is not Canadian programming for the purposes of Canadian programming exhibition requirements in the new licence term;
 - i. Impose a COL that Super Channel’s Canadian programs be scheduled evenly throughout the broadcast day; and
 - j. Consider requiring evidence of financial capacity to demonstrate that Allarco has means to operate Super Channel in the new licence term.
22. As stated previously, On Screen Manitoba urges the CRTC to have Allarco consult with each provincial industry association to determine any future regional outreach programs. We are not calling for a formal consultation that may incur additional costs to the licensee and the association, but rather a simple process, managed through telephone and email to determine the form of outreach programs and the best means of measuring the programs’ effectiveness. This collaborative approach will help to ensure future programs are meaningful and that they address industry need on a province-by-province basis.
23. On Screen Manitoba appreciates the opportunity to share our comments regarding the licence renewal application of Super Channel.

Sincerely,



Nicole Matiation
Executive Director / *directrice générale*

cc. Mark Lewis, Counsel for Allarco, Lewis Birnberg Hanet LLP, mlewis@lbhmedialaw.com

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