

March 13, 2019

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) – Phase Two 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).
 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. Having reviewed the information recently added to the public record by Allarco On Screen Manitoba remains gravely concerned by Allarco's apparent lack of compliance to its current conditions of licence (COLs) for Super Channel.
 4. 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; however, we believe that a public hearing is required in order for the CRTC to examine Allarco's application and determine how to best to address its apparent non-compliance under its current

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.

licence along with any future conditions of licence under a licence renewal. In the event a public hearing is held to address this matter, On Screen Manitoba requests to appear.

5. The Canadian content distribution system is built on the Broadcasting Act, which recognizes the important role that 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.
6. 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.
7. In light of significant consolidation of Broadcasters over the past ten to fifteen years, Super Channel was perceived to be a positive addition to the Canadian broadcasting system. Super Channel could continue to offer independent Canadian producers with increased opportunity to create and distribute original Canadian content, but it must comply with the COLs set out by the CRTC.
8. 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.
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. While these efforts are to be commended, historic and current non-compliance with COLs point to the need for a public hearing. On Screen Manitoba agrees with the CMPA that should a public hearing be called and the CRTC determines to provide a licence renewal to Super Channel, then the following COLs, should be imposed:
 - a. Indicate to the licensee that any further appearance of non-compliance would trigger a "show cause" hearing with the potential for mandatory orders or the suspension or the revocation of its licence;
 - b. Grant a short term licence of no more than three years;
 - c. Maintain the current requirement of Canadian programming expenditures (CPE) of 30%;
 - d. Impose expenditure requirements of at least \$500,000 annually on regional outreach programs and an additional \$500,000 annually on script and concept development and direct the licensee that it is not permitted to include normal operating costs and loans in those calculations;

- e. Require that any Super Channel “make up” any current COLs not achieved by August 31, 2017 within the new licence period; and,
 - f. Impose additional COLs to ensure the licensee conforms with new COLs including that no more than 3% of Super Channel’s broadcast program be devoted to filler programming as a means to reach CPE requirements.
10. On Screen Manitoba notes that Super Channel appears to be in non-compliance with regard to four COLs (5, 6, 7 and 8).

Canadian Programming Expenditures (Condition of Licence 5)

11. According to the CRTC’s Statistical and Financial Summary for Super Channel 2012-2016², during that period, Allarco does not appear to have met the 30% CPE for Super Channel. As noted in Broadcasting Decision CRTC 2013-468, we understand that Super Channel was permitted to use the cash method of accounting in regard to actual CPE while using the accrual method when reporting the expenditures until August 31, 2016; however, it remains unclear as to whether or not this COL has been met.
12. Further, in data provided to the CRTC in reply to deficiencies, Allarco indicated that it actually paid less than half of the amount reported in its 2016 annual return as CPE licence fees to producers as a result of its financial arrangement under bankruptcy protection. Only the actual CPE payments reflect Super Channel’s real contribution towards the development and production of Canadian programming and this amount does not appear to meet the COL.
13. 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 that the licensee 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)

14. Allarco has included “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.
15. In regard to COL 8 and regional outreach programs, Allarco has not yet provided sufficient detail to determine whether it met the required total expenditure of \$2 million.

² <https://crtc.gc.ca/eng/publications/reports/branalysis/psp2016/individual/ipsp183.htm>

16. In light of incomplete information, On Screen Manitoba is left with the perception that Allarco did not meet the COLs 6 and 8 for regional outreach programs. Further examination by the CRTC is required to ascertain that COLs 6 and 8 were met.
17. Further, beyond On Screen Manitoba's knowledge of the much appreciated though modest support it received from Super Channel, the annual reports to the CRTC during Allarco's current licence term do not provide any detail about the effectiveness of its regional outreach programs. On Screen Manitoba urges the CRTC to require Allarco to 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, but a simple process managed through telephone and email with an evidence-based approach to determining the form of any outreach programming and means of measuring the programs effectiveness. This collaborative approach will help to ensure that future programs are meaningful and that they address actual industry need on a province-by-province basis.
18. Looking towards any future conditions of licence for regional outreach programming, along with salaries On Screen Manitoba would 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 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.
19. 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 current regional outreach programs and impose a COL requiring \$500,000 in annual expenditures. Further, On Screen Manitoba humbly requests that the Commission require that Super Channel consult with and work in collaboration with provincial industry associations to develop and determine meaningful regional outreach programs on an annual basis throughout the licence term.

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

20. 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." The CMPA, in their submission to the current process identifies other irregularities in Allarco's reporting. 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 because it included repaid loans in its calculation;
 - b. The licensee be directed that it is not permitted to include loans in script and development expenditures; and that further information regarding expenditures on script and concept

development in the current licence term is required to determine whether the reported amounts were counted twice for the same projects in development and in production;

- c. In any new licence term Allarco must make up any current shortfall of expenditures relating to script and concept development (COLs 7 and 8); and,
 - d. In any new licence term Allarco must expend \$500,000 per year on script and concept development.
21. In light of all of the above, On Screen Manitoba is in agreement with the Canada Media Producers Association (CMPA) and other stakeholders that the Allarco is non-compliant with its current licence and that a public hearing is required to address outstanding issues relative to Super Channel's existing licence and to determine any licence renewal.
22. On Screen Manitoba would also like to note that the recent proceeding to establish a more transparent and comprehensive annual production report for large group broadcasters (CRTC 2018-488) may also serve to guide the development of a standard, transparent and comprehensive annual production report for all broadcasters. Such a report would be useful for licence renewal applications proceedings such as the current proceeding for Super Channel.
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*
On Screen Manitoba

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

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