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## FILED ELECTRONICALLY

February 9th, 2011

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-Television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

RE: 2010-952 Licence Renewals for the English Private Broadcasting  
Corporate Groups.

Dear Mr. Morin,

1. The DOCUMENTARY ORGANIZATION OF CANADA | L'ASSOCIATION DES DOCUMENTARISTES DU CANADA (DOC) would like to thank the Commission for the opportunity to provide these comments regarding the licence renewals for the English private broadcasting corporate groups. DOC supports the current form of the 2010-167 regulations. We support broadcasters' applications if they are consistent in their application of the 2010-167 regulations. However, we have some concerns regarding its implementation that could inadvertently impact the documentary production sector.

2. DOC is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit arts service association representing over 800 directors, producers and craftspeople in the documentary community, from all provinces and regions of the country. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.

### **Executive Summary**

3. Over the last 2 years, the broadcasting community and the Commission have worked together to develop new television regulations that provide support for under-represented programming, and give flexibility for the corporate groups in order to remain healthy during this time of technological, audience viewership, and economic transition.

4. DOC has examined the applications of the 3 qualifying groups, as well as Corus Entertainment who wishes to fall under the purview of these regulations. Because the broadcasters argue many of the same proposals, DOC will comment on broad strokes of the broadcaster applications and then provide more detailed positions that refer to each application. In addition, DOC puts forward its own proposals regarding the expenditures on documentaries, and submits questions for consideration to the Commission.

5. The licence renewals will create the programming framework for the next 5 years. As a programming of national interest genre, the future of documentary programming will be decided. In order for the 2010-167 regulations to effectively support, documentary programming, the Commission must create appropriate and specific guidelines for documentary production. As documentary content becomes increasingly popular on television, and on new platforms, it is essential that benchmarks be developed that allow for Canadians to access content, support the industry and allow for broadcasters to have the flexibility to exploit their services. DOC recommends the following documentary specific requirements.

1. 30% of all PNI spending should be directed towards documentary production
2. Conventional stations should spend at least 20% of its PNI allocation on documentaries

6. DOC is supportive of those broadcasters who are willing to comply with the 2010-167 regulations. However, we urge that the Commission be stringent in its application of the regulations for broadcasters whose prospective spending favours more non-Canadian programming and less independent programming requirements. DOC recommends that:

1. All corporate groups be subject to the 30% CPE requirement;
2. All corporate groups be subject to the 5% PNI requirement;
3. All specialty assets maintain their requirements for independent production;
4. 75% of all PNI programming be commissioned from independent producers;
5. Subject to a condition of licence, broadcasters commission works from all the country's regions, and that an appropriate rate be developed for each region;
6. Broadcaster reporting on PNI and CPE must be transparent and subject to scrutiny by the Commission.

7. Finally, there are many important issues that are being discussed in this hearing such as terms of trade and the mandates of certain specialty channels. DOC is supportive of the Commission's position on terms of trade agreements, and of its investigation of the programming schedules of specialty channels who have deviated from their mandate. DOC recommends that:

1. The Commission only consider licence renewals if they are accompanied by substantive proposals from the CMPA and the broadcasters on terms of trade as opposed to the agreements in principle as submitted by broadcasters with their licence renewal documentation;
2. The Commission design specific conditions of licence that prevent the liberal interpretation of channel mandates by deviant licencees in order to maintain genre protection and the programming integrity of those channels;
3. The Commission evaluate and institute punitive measures to deter the broadcaster practice of misapplication of program categories by corporate groups.

## **The Changing Communications Landscape and its Impact on Canadian Broadcasting**

8. Over the last 10 years, the Canadian communications landscape has horizontally and vertically integrated. Broadcasters have become massive corporate groups offering national conventional broadcasting over the air, and dozens of specialty channels over cable. Although the trend began in 2000 when BCE bought CTV for the first time, currently almost every major English broadcaster is owned (or will be owned) by a broadcasting distribution undertaking or telecommunications enterprise. Furthermore, these vertically integrated companies offer (or are about to offer) mobile wireless telecommunications and broadband Internet services. Clearly, the broadcasters applying for licence renewals are not the same corporations as they were ten years ago.

9. DOC will not comment on the intricacies of vertical integration in this intervention. We would like to remind the Commission that every applicant is (or soon will be) part of a vertically integrated corporate group that derives revenues from Internet, broadcasting distribution, and wireless telecommunications.

## **The Principles Behind the New Television Regulations**

10. In their applications, the broadcasters state that the main purpose of the 2010-167 regulations is to provide broadcasters with maximum flexibility in a transition era. However, the new regulations were designed in the context of other policy goals, including:

- Streamlining the application process for corporate groups;
- Supporting Canadian independent under-represented programming.

11. The 2010-167 regulations serve as a replacement for the priority programming system. It is DOC's opinion that the priority programming regime failed in many ways:

- Non-Canadian programming expenditures ran out of control;
- The under-represented program genres (dramas and documentaries) were insufficiently supported;
- Regional production decreased and commissioning was concentrated in Ontario;
- 2nd and 3rd window licences vanished as cross-service licences became the norm;
- Broadcasters masqueraded reality TV, lifestyle, and news magazine show under the guise of the documentary category, which eroded the stability of the genre and decreased production.

12. Although the 2010-167 regime institutes many changes, it is important to recognize what is absent from the regulations: expenditure restrictions of non-Canadian programming. The absence of regulations limiting the amount of non-Canadian programming does not infer that the problem no longer exists. Surely the Commission is aware that over-spending on non-Canadian programming remains a problem in our industry, currently not captured with the 2010-167 regulations. DOC hopes that the Commission will keep in mind the previous programming regime's shortcomings as it evaluates the broadcasters' applications.

### **English Documentary Television Production 2000-2010**

13. Over the last ten years, English Canadian documentary television rose to its highest production volume, but fell back to levels prior to the implementation of the priority programming regime. In the early years of last decade, the growing specialty market provided great opportunities for documentary producers to licence their content to niche broadcasters. As the market became increasingly consolidated, and licencing practices changed, the number of broadcasting windows decreased, and the opportunities of the digital market were forfeited (see appendix A).

14. The priority programming regime was intended to help under-represented programming including documentaries; it was one of the required program categories. However, because the regime was exhibition based, many broadcasters developed, commissioned, and broadcast news magazine, reality TV and lifestyle programs, and labelled them as documentaries. In November 2010, the Commission modified the program categories and added a reality programming definition. The results of these modifications have yet to be seen.

15. In 2010, all major broadcasters either discontinued a documentary window, or closed a documentary department: CBC cancelled *the Lens*, *Global Currents* is on hiatus, and CTV consolidated its documentary department into its factual programming department. The result was a dramatic drop in English documentary commissions. The broadcasters' group-based expenditures reveal the impact of these recent changes (see Appendix B). The total expenditures on documentaries by CTV, Shaw, Rogers, and CBC conventional stations totaled: approximately \$20 million (See Appendix C); \$12 million was independently produced . Finally, the number of documentaries aired shows just how few documentaries are broadcast on conventional stations (See Appendix D).

16. Development expenditures, broadcaster programming licences, and exhibition windows are the key to documentary production. Almost every documentary fund, including feature film funds, requires a television licence. Licence fees trigger most tax credits. Furthermore, broadcaster licences are a significant contribution to the financing of a documentary. The drop in licence fees over the last 3 years has mirrored the decline of documentary production (see Appendix E).

17. Without exhibition windows there are fewer places for documentaries to be broadcast, and consequently no motivation for the broadcaster to commission documentaries of certain formats. One-off documentary programs are usually broadcast as part of anthology series or strands. Over the last 5 years, the number of documentary one-off projects and hours has substantially decreased (see appendix F). The declining number of one-off strands on conventional television points to the disappearance of one-off long-form documentary programming on conventional networks in the future.

18. Data shows that English broadcasting corporate groups licence fees and their exhibition windows are the backbone of the Canadian documentary production. Yet, the future of the Canadian documentary industry rests in the hands of those very broadcasters that are reluctant in their support of the genre. The 2010-167 regulations are a good first step to bolster documentary production. However, without benchmarks it will be difficult to assess whether the regulations reach their policy goal: supporting under-represented programming.

### **Rising Popularity of Documentaries: Supporting Documentaries is Beneficial for Broadcasters**

19. Despite the declining support for documentaries by conventional broadcasters, the demand for documentaries by Canadian audiences is growing on traditional and digital platforms. The inclusion of documentaries as a program category in the PNI system will benefit the broadcasters who invest their PNI allocation in the genre. They will have high ratings on their specialty services and attract viewers to their digital media platforms.

20. According to CMF's audience reports, CTF funded documentaries are increasing in popularity on all services. The top-performing CTF-funded English documentary during 2007-08 was *Men of the Deeps*, which aired on the CTV network, recording 701,000 viewers. In 2008-09, the top CTF-funded English documentary was *Aftermath: The World Without Humans*, which aired on the Global network, capturing 772,000 viewers.

21. In the conventional market, more documentaries are getting higher ratings. During the 2007-08 broadcast year, 5 of the CTF-funded documentaries which aired on English conventional broadcasters achieved higher than 500,000 viewers, while 10 delivered over 300,000 viewers. In the following year, 22 of the CTF-funded documentaries that aired on English conventional broadcasters delivered more than 300,000 viewers. 12 of these documentaries achieved higher than 400,000 viewers and 3 documentaries captured more than 500,000 viewers. On the specialty broadcasters, 4 of the CMF-funded documentaries delivered over 100,000 viewers in 2007-08 and similar audience numbers were generated by 7 documentary titles in 2008-09.

22. Documentaries garner high ratings for Canadian programs on specialty services, and the mid-tail of the conventional services. As the trend shows, documentaries are increasing in popularity, thereby providing broadcasters with a reliable form of programming that can fill unique broadcasting schedules.

23. The audience reports suggest another trend which is that documentaries programmed across multiple services can generate larger audiences over time. A case in point is *Aftermath* which was originally aired on History. On this specialty channel, its AMA reached 213,000 in 2007-08 and, as such, was the highest rated Canadian documentary for specialty television. The following year it was aired on Global National, a conventional service, and garnered an AMA of 772,000. It ranked as the highest rated Canadian documentary that year. The program was aired again on History with an AMA of 150,000 and earned it the 2nd highest ranking for a Canadian documentary on specialty television.

24. Outside of the living room, Canadians are seeking out documentaries: in theatres, at festivals, online, and even organizing documentary screenings themselves. The majority of documentaries being viewed outside the home are POV documentaries.

25. Canadian documentaries are getting wider distribution and larger cumulative grosses than ever before. Released in October 2008, *Up the Yangtze* stayed in theatres for 27 weeks, across 23 theatres.<sup>1</sup> Its cumulative worldwide box office gross is just over \$1 million USD. *Sharkwater* opened in 60 theatres in November 2007. Its cumulative

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<sup>1</sup>Box Office Mojo, *Up the Yangtze* (2008). Online, <http://www.boxofficemojo.com/movies/?id=uptheyangtze.htm>

worldwide box office gross is \$1.6 million USD.<sup>2</sup>

26. Canada's two largest English documentary film-festivals, Hot Docs, and DOXA, have seen their attendance increase year by year. The annual attendance of Hot Docs grew from 122,000 to 136,000 from 2009 to 2010. DOXA's annual attendance grew by 7% in 2010. Hot Docs also screens monthly screenings throughout the year in many cities across the country, including Toronto, Vancouver, Edmonton, and Calgary.

27. As for citizen-run and salon initiatives, Open Cinema in British Columbia hosts about 6 screenings a year. 75% of films shown are Canadian documentaries. With 37 locals across Canada, Cinema Politica held 327 screenings across the country; 89 films of the exhibited films were Canadian documentaries. Clearly, if Canadians are organizing their own events to see documentaries, they are not finding what they are looking for on television.

28. Many Canadians are turning to the Internet to watch documentaries. iTunes Music Store, NFB.ca, Hot Docs Library, and broadcaster video portals are places where Canadians are looking for documentary content. Broadcaster portals had over 3 million views between January 2009 and June 2010. NFB.ca has had 3.3 million hits in the same period. With the increased viewership of documentary content online, and the viewers navigating from one screen to another, broadcasters could capitalize on audiences gathered on the Internet to steer them to their broadcast properties.

29. These findings are evidence that there is a demand that is not being met by the Canadian broadcasting market. Increased expenditures on documentaries should not be seen as a burden to broadcasters, but rather, speak to a market advantage they could hold should they choose to program this increasingly popular genre which would also allow them to fulfill their regulatory obligations. DOC is at loss to understand why, in spite of their increased popularity, fewer documentaries are being commissioned by broadcasters.

## **A PNI Documentary Rate**

30. In order to develop a baseline to determine the appropriate expenditures for PNI, the Commission asked the qualifying broadcasters to report their group expenditures of award shows and documentaries for 2008, 2009, and 2010. As appendix B indicates, the group-spend of all

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<sup>2</sup>Box Office Mojo, *Sharkwater* (2007). Online, <http://www.boxofficemojo.com/movies/?id=sharkwater.htm>

qualifying broadcasters on documentaries has declined. Given that documentary production has been declining for the last 4 years, DOC suggests that the Commission should not rely solely on 2008, 2009, and 2010 as a baseline for expenditures and recommends that another benchmark be used.

31. DOC has taken the initiative of developing a benchmark for the Commission to consider, one that would ensure flexibility for the broadcasters in their programming choices and also reverse the declining production trend of the documentary industry. The proposed benchmark fits into the general framework of the policy language of the 2010-167 TV regulations. We propose a percentage of the PNI be dedicated to expenditures on documentaries (see Appendix G).

32. DOC recommends that all broadcasters should spend at least 30% aggregate of their PNI allocation on documentaries per year. We do not consider this expenditure requirement to be onerous for CTV and Shaw Media. They already plan to spend around and over this amount (29% and 51%, respectively). Despite, their low prospective spending on documentaries, Corus and Rogers could also accommodate this rate.

33. Corus has many specialty channels that are licenced to program documentaries including: W network, CMT, Sundance, Viva, Movie Central, and soon OWN. We recognize that Corus specializes in children's programming. The documentary rate would allow for Corus to direct some of its documentary PNI on documentary programming for children. The company could meet this obligation by availing itself of its CMF flex envelope. It could also take advantage of the programming flexibility offered by the 2010-167 regulations. With these tools, Corus could amply commission documentaries for their services, and meet the 30% requirement.

34. Rogers states that it does not have any assets that focus on documentaries. However, in these licence renewals, it has applied to expand the amount of documentary programming it can broadcast on G4Tech and OLN. As for its conventional assets, CityTV has a COL that stipulates that it must broadcast at least 10 documentary hours a year. OMNI, which is also part of Rogers' corporate group, also commissions and broadcasts documentaries in other languages. Finally, the Biography channel should specialize in biographical documentary programming; it is part of its mandate. Clearly, Rogers has assets that can support documentaries.

35. However, Rogers points to its small CMF envelope, and argues it cannot access as much funding as other larger broadcasters. It states that it would have to fill its programming's funding gap with higher licence fees. Other broadcasters have opted to do exactly that for the purpose of increasing their envelope. If Rogers wants to grow its envelope, there is a solution it can exercise. Rogers' application points to a practice where it does not spend above the threshold, and consequently, it does not avail itself of this method of growing its envelope.

### **Programs of National Interest Should be Available to the Nation**

36. Despite the evolution of broadcasting, and audience fragmentation to new platforms, conventional stations still have the largest audiences. There are several reasons why this is the case. First, OTA is available to anyone. Second, 90% of Canadians subscribe to a broadcasting distribution undertaking service<sup>3</sup>, offering the local conventional stations of each of the qualifying broadcasters as part of their cable packages. Therefore, because these channels reach the most Canadians, there should be special stipulations that ensure that Canadians receive high quality programming regardless of their cable packages.

37. Over the last 2 years, conventional broadcasters have commissioned less documentary programming. Although specialty channels commission the majority of documentary programming, Canadians should not have to pay higher cable bills to see them. DOC understands that the goal of the new regulations was to create more flexibility for broadcasters. Even though 90% of Canadians subscribe to cable, not all Canadians choose extensive packages. If broadcasters slot documentaries only on their specialty channels, programs intended for the national interest won't be accessible to all viewers. The policy goal underlying the PNI is that the supported genres be available to Canadians across the country. CTVgm and Shaw Media by way of CTV conventional and Global reach right across the country and therefore have an obligation to live up to the policy goals as set out by the Commission.

38. DOC requests that the Commission develop an appropriate nontransferable documentary minimum expenditure requirement for the qualifying broadcasters. We propose that 20% of the PNI expenditures for conventional stations be spent on documentaries.

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<sup>3</sup> CRTC Communications Monitoring Report 2010. pg iii

## Broadcaster Licence Renewal Applications

39. After reviewing the applications of the qualifying broadcasters, and the application of Corus, DOC observed some general patterns in the application of the regulations described in BRP 2010-167. DOC will address each below.

## Canadian Programming Expenditures

40. Most broadcasters argue that the CPE rate of 30% of their gross revenues does not accurately reflect their historical spending habits. They argue that a 30% rate would compromise their competitiveness in the broadcasting environment. They suggest reducing the rate to 29% or lower. In addition, they think that the final CPE rate should be based on more recent years, as they argue that it would be a more accurate reflection of the current state of the broadcasting industry.

41. The Commission must consider the inadvertent impacts on the health of the broadcasting sector, but the purpose of the CPE rate is to create a reasonable floor for Canadian programming expenditures. One of the policy goals guiding the new regulations was to curb the overspending on non-Canadian programming. The 30% CPE rate maintains a healthy level of Canadian programming and restricts non-Canadian programming expenditures.

42. DOC would like to see the broadcasting environment prosper; the majority of documentaries produced in Canada are financed as television documentaries. However, all the applicants are part of vertically integrated corporate groups that can exploit structural, economic, and programming efficiencies. It is difficult to believe that if the television broadcasting arm spent 30% on Canadian programming, that it might compromise the competitiveness of the entire corporate group.

43. In addition, some broadcasters propose lower expenditure requirements for their corporate groups and plan to spend more on American programming. According to Rogers' prospective programming expenditure table, it would spend between 43% and 51% of their gross revenues on non-Canadian programming. Shaw media would spend between 1% and 3% more on non-Canadian programming than on Canadian programming each year. The Commission should examine these prospective expenditures when evaluating lower CPEs for broadcasters.

44. Regulations should not be too onerous, but the transition to a CPE environment requires certain costs to be met. The new television regulations are in place to support Canadian programming and provide flexibility so that broadcasters can be competitive in this current broadcasting climate.

## **PNI and Regional Production**

45. DOC favourably notes that most broadcasters are willing to spend at least 5% of their corporate groups' gross revenues on PNI. However, we are concerned about how the numbers will be tabulated. There has to be transparency in regards to expenditures. Cases of "double counting" should not be possible. A program that is commissioned by one station should not be claimed again by another property of the same corporate group. DOC is sure that the Commission will execute due diligence when assessing the broadcasters' PNI reports.

46. Our second concern is that none of the broadcasters have made firm commitments to commissioning regional programming. In 2010-952, the Commission states: "it expects that the groups will commission PNI production from all regions of Canada commensurate with their presence in the respective markets in which they broadcast."<sup>4</sup> DOC would like to see this expectation become a condition of licence.

47. Over the last 10 years, broadcasters have closed their regional commissioning departments across the country. Despite the incentives created by the CMF/CTF, regional production has yet to recover. Fewer regional productions are commissioned because of broadcasters' absence in the regions. As Appendices H and I illustrate, national conventional broadcasters have increasingly concentrated their production in Ontario. PNI should reflect the lives of Canadian across the country, not simply the region where the broadcaster's corporate headquarters happens to be located.

48. Although the CMF has created new initiatives to increase regional production, the expectation of the qualifying broadcasters to commission from the regions is not enough. There must be a condition of licence requiring the corporate groups to commission programming from the regions. The condition of licence should also outline how much production in each region is an appropriate amount.

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<sup>4</sup>BNC 2010-952

## Independent Production

49. In BRP 2010-67, the Commission outlined regulations concerning independent production in the new television regulatory system. First, 75% of all PNI programming would have to be independently produced. Second, any requirement related to independent production for specialty services would remain as COLs. In their applications, all broadcasters proposed to remove these requirements. In most cases, the broadcasters argued that it would not be consistent with the 2010-167 regulations if the requirements remained. DOC does not support the removal of these COLs.

50. These conditions were originally established by the Commission to maintain a healthy level of independent production in Canada. The requirement of 75% of PNI production be independently produced is a floor, not a ceiling. It is consistent with existing policy. Despite what the broadcasters argue, these requirements for specialty channels pertaining to independent production are consistent with the 2010-167 TV regulations, but part of the regulations themselves.

“ specialty services that currently have individual requirements relating to independent production will retain those requirements.”<sup>5</sup>

## Terms of Trade

51. DOC supports the CMPA’s negotiations with the broadcasters. Unfortunately, the 2009 terms of trade document filed by the broadcasters are not substantive proposals, but guidelines and negotiating principles. The Commission must request that the applicants file actual substantive principles. The documentation provided by the applicants should not be used to establish appropriate provisions for terms of trade because they are not substantive, or specific enough to address terms of trade surrounding digital rights and new media rights.

52. When the Commission receives actual substantive proposals from the broadcasters, it can begin to establish appropriate provisions for terms of trade. Now more than ever, independent producers need leverage to negotiate their digital rights. All of the applicants are owned (or soon to be owned) by a vertically integrated company that will be able to exploit their programming on multiple screens. Independent producers must be compensated for their work. The terms of that compensation should not be developed from open ending negotiating principles, but by substantive proposals. DOC supports the Commission as a fair arbiter in the

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<sup>5</sup>BRP 2010-167, paragraph 95

negotiation process, and appreciates its ongoing support for terms of trade.

## **Rebranding and Not Upholding the Mandates of Specialty Channels**

53. Over the last decade, the number of specialty channels grew substantially. Many channels were divested from one broadcaster to another, and their programming strategy changed under its new ownership. When licence renewals for these services happen, the broadcasting community and the Commission evaluate the performance of these channels under their new ownership. Since the Commission has chosen to create group-based licence renewals, many of the major specialties are up for review all at once. Fortunately, the Commission has asked certain broadcasters to defend their programming strategies.

54. DOC supports the Commission's enquiry into the rebranding of channels by their new owners. Over the last 10 years, many channels - too many to count - have been rebranded without the Commission's consent. In some cases, the rebranding is a subtle shift in programming strategy where a dominantly factual programming station begins to exhibit reruns of drama licenced by another station (History). In other cases, the channel is completely rebranded with a new name and its programming is completely altered (Discovery Health becomes Twist TV). The broadcaster uses a very liberal interpretation of their channel's mandate to justify this programming change.

55. The broadcast licences for these specialty channels also guarantee genre protection depending on their category. When a broadcaster begins to blur the genres of the channels, one begins to question whether or not these channels actually deserve genre protection at all. DOC applauds that the Commission has begun updating the program categories to reflect the new television regulations. We would like to see the same scrutiny applied to genre protection for these channels. When broadcasters begin to interpret the mandates of its services more liberally, programming strategies change, and the independent production community can be negatively impacted.

56. The licence renewals are a vast undertaking, but the Commission should not forget that the specialty channels need to be evaluated. A broadcasting licence is a privilege not a right. DOC would like to see COLS that require stricter interpretations of the mandates. In addition, there should be penalties for those broadcasters that deviate from upholding the original programming mandate of the services.

## Individual Applications

### *Corus*

57. Overall DOC admires that Corus is willing to take on more regulatory obligations that would result in the creation of more Canadian television production. However, DOC does not support Corus' attempts to divest itself of many of its commitments to independent production. Although Corus will commit 75% of its PNI allocation to commissioning programming from independent producers, in its application, Corus proposes to remove all COLs related to independent production. As stated earlier, DOC thinks that these COLs help maintain a healthy level of independent production suited to the individual mandates of Corus' specialty channels.

### *CTVgm*

58. DOC is pleased that CTVgm will implement the regulations of 2010-167, but we do not support its modifications to its COLs that pertain to independent production. The 75% independent rate was designed in addition to maintaining the specialty channel requirements. Furthermore, CTVgm is also proposing to alter conditions of licence that limit the amount of service and in-house production. DOC also opposes any changes to these conditions of licence. Finally, CTVgm argued that the CAT B channels should not have any additional independent production COLs, because the PNI system would support independent production on these channels. DOC agrees with CTVgm, but if the service has requirements related to independent production, they should not be removed.

59. DOC regrets that Access is receiving declining financial support from the Albertan government. We are pleased to see that CTVgm will continue to operate the station according to its mandate without the sufficient support of the Alberta government. Access has been a hub for independent documentary production in Alberta. Its mandatory carriage allows for Albertans to have access to local Albertan stories. We support CTVgm's arguments on the basis that the channel will continue to be an educational broadcaster. DOC would like to see more independently produced regionally themed documentaries as part of its programming schedule.

60. In its application CTVgm said that its program logs accurately reflected the programming of each service. DOC disagrees with this statement. CTV has consistently mislabeled many programs as documentaries throughout its last licence term. When taken in conjunction with its expenditure reports, many more programming errors become apparent. Given that the reporting errors extend to the

independent production reports as well, this casts doubt about their overall effectiveness in monitoring independent production commissioning practices. The most egregious reporting errors include:

- CTV labeled the Canadian Idol Series and So You Think Can Dance Canada as documentaries and Variety and Performing Arts shows simultaneously in the programming logs and independent production reports from 2002-03 until 2008-09.
- CTV labelled W5 a documentary program every week, but according to its 2009-10 financials it did not do any in-house documentary production. However, W5 Presents does actually exhibit documentary programs.
- CTVgm counted Olympic documentaries, which should be labeled sports programming.

61. DOC applauds the Commission's initiative to update the programming categories, especially the documentary category and the creation of the reality TV category. However, given the period between licence renewals, and that the reporting documents are not reviewed for accuracy during the licence period, we are concerned that CTVgm may again camouflage big budget reality TV shows as documentary programs. If broadcasters don't accurately report on their PNI programming, broadcasters should be penalized. In a regulatory regime based on expenditures, it is especially important that these reports be reviewed with diligence.

### ***Shaw Media***

62. Overall DOC is pleased that Shaw Media will be spending an appropriate amount of its future PNI on documentaries on its respective services. Shaw Media's specialty assets commission a large amount of documentaries. However, we reject Shaw's proposal in regards to its adjustments to the CPE rate. Shaw argues that it needs to spend less on Canadian content to remain competitive.

63. DOC recommends that the Commission consider the entirety of Shaw's expenditure plans when evaluating Shaw's recommendation to have a 29% CPE. After examining its prospective expenditures on non-Canadian programming for the next 5 years, the company plans on spending more for non-Canadian programming than Canadian programming. The CPE system sets up previous Canadian expenditures as a baseline; it should not do the same for non-Canadian programming expenditures.

64. Although Shaw is not responsible for the following reporting errors, DOC would like to point out that there were numerous reporting errors in the independent production reports during the licence of Global TV. Many programs were mislabelled as documentaries, including:

- Holmes on Holmes special: *Make it Right New Orleans* (2008-09) is a reality show on home renovation
- *Shaye I* (2007-08) is a reality show on making a pop band
- *Popstars I, II, and III* (2000-2003) is reality show on making a pop band

65. Similar to our critique of CTVgm's program logging errors, DOC recommends that the Commission scrutinize the new PNI programming reports. When the two of the largest national television broadcasters have successfully labelled reality TV programs as documentaries without penalty, it is clear that the Commission should attempt to stop this practice, especially in an expenditure based programming regime.

66. DOC is also concerned about the changing programming line ups of certain specialty channels highlighted by the Commission, namely: History and IFC. As we argued before, these channels have genre protection from foreign services, and other kinds of competitive advantages. If the owners of these assets do not maintain the mandate of these channels, they should not receive regulatory benefits.

67. History commissions a large amount of documentaries each year, and DOC would like for it to remain healthy and successful. However, the increased inclusion of foreign dramatic programming on the channel worries us. In response to the Commission's inquiries about its programming practices, Shaw has liberally interpreted the mandate of history in its application. Although it is true that many of its dramatic programs are about historical periods, such can be said of any television program. There needs to be reasonable limits on the interpretation of the term historical so that History maintains its mandate without compromising the integrity of its programming.

68. As for the IFC's programming schedule, Shaw is liberally interpreting the mandate of the channel so that it can show popular American movies rather than dedicating the channel to the independent film community. Overall the schedule of the channel resembles a channel about blockbuster movie-making rather than the practice of creating independent films. Almost all Canadian films are independent and they would suit the schedule of the IFC. DOC is worried that Shaw's current programming strategy changes IFC into an American movie channel, and consequently, another window for Canadian content and Canadian

documentary features is effectively shut.

### ***Rogers***

69. DOC appreciates that despite its smaller set of broadcasting assets Rogers will be maintaining the independent production requirements of its specialty channels. In addition, we are also pleased that Rogers wants to increase the amount of documentary programming it can exhibit on OLN and G4Tech. However, in regards to CityTV, Rogers wants to remove the COL that requires it show 10 hours of documentaries per year on its Vancouver and Toronto services. Given that Rogers will have to spend some of its PNI allocation on documentaries on its conventional stations, DOC finds it confusing that Rogers would propose this amendment.

70. The requirement is part of a larger COL that requires Rogers to broadcast 100 hours of Canadian long form features of which 10 hours maximum can be documentaries. Rogers addresses the condition of licence overall, but it does not address the documentary aspect of the COL. DOC recognizes that CityTV cannot exploit the programming windows of other services such as Bravo! and Space, but documentaries are a program of national interest. They should be broadcast on Rogers' national network in order to reach the most Canadians.

71. In its application, Rogers argued that it cannot implement the 30% CPE rate and the 5% PNI rate because it would compromise Rogers' competitiveness. Similar to Shaw, Rogers plans to spend a larger share of its combined gross revenues on non-Canadian programming. In fact, Roger's proposed share would be the largest share of revenues of all of the qualifying broadcasters to be spent on non-Canadian programming: between 43% and 51% of its gross revenues. Given that one of the major policy goals of the new regulatory regime is to support Canadian programming, and implicitly to curb spending on non-Canadian programming, DOC thinks that Rogers' proposal for a smaller CPE and PNI go against stated policy goals. We urge the Commission to consider Rogers' past and prospective programming habits when it evaluates Rogers' proposal for flexibility.

72. Furthermore, similar to CTV conventional and Global national, CityTV has a history of misapplying the documentary program category over its licence term. Many programs were mislabeled as documentaries including:

- *Survivorman* and *Word Travels* are how-to and travel programs.
- *Conviction Kitchen* and *Family Restaurant* are reality television shows.
- Several "making of" movie specials that should have been categorized as 7c.

73. DOC is pleased that the documentary definition has been amended and that there will be a reality TV category. We welcome the chance to help create this category. However, new definitions may not stop the misapplication of the documentary definition. Given that all three qualified broadcasters have misapplied the documentary definition in the past, we would like some assurance that the Commission will scrutinize the PNI reports, so that the broadcasters are accountable for any logging errors during the 5 year licence term, rather than when they appear before the Commission at the time of licence renewal.


### **Conclusion**

74. The 2010-167 TV regulations create a good framework to support under-represented programming, provide the necessary flexibility for broadcasters, and a more streamlined approach to regulation for the Commission. By reintroducing spending requirements and enhancing programming flexibility for broadcasters, broadcasters have the opportunity to offer audiences an increasingly popular television program genre: documentaries.

75. DOC recognizes that the broadcasters have different assets and different corporate structures, but the regulations should have stringent baselines aimed at maintaining a healthy level of Canadian programming in an increasingly fluid viewing environment. Complimentary to these measures, the Commission must establish reporting mechanisms that are transparent, and accountable.

76. DOC would like to thank the Commission for this opportunity to comment on these applications. These renewals set the stage for 5 years of television programming. They have far reaching consequences for the entire broadcasting community, especially the independent documentary production community. We trust the Commission will consider our positions when evaluating the qualifying broadcasters' applications.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Christou', is written below a horizontal line.

John Christou  
Chair

## Appendix G

### Methodology for developing 30% Documentary Rate

Unfortunately, there is not sufficient information available to the public to develop a historical percentage of documentary expenditures of the broadcaster corporate groups. The corporate groups did not compile the group spend of drama programming, so it is difficult to compare all past PNI genre expenditures. Instead, DOC looked at the prospective documentary expenditures of broadcasters and CTF funding trends.

In their projected expenditures, broadcasters used different 3-year cycles to calculate the PNI rate: either 2008 - 2010, or 2009 - 2011. In some cases, such as Rogers, the broadcaster applied a lower rate (2.5%) than the one required by the Commission (5%). The prospective documentary expenditures indicate that the total average expenditures on documentaries across the four corporate groups for the next 5 years would be 25% of all PNI per year.

On average, 21% of all CTF funded programs were documentaries over the last 10 years. The CTF and the PNI system support some of the same genres (documentaries and dramas), but others do not conform (children's and youth, variety and performing arts, and award shows).

In order to move from the CTF funding environment to the PNI system, children's and youth programming would be subsumed into the drama and documentary shares of funding. Variety and performing arts would be set aside as the awards show rate -- if the broadcaster does produce these programs, otherwise it is subsumed into the other genres. If children's and youth was split 70/25 in favour of drama, the documentary share of CTF spending would be 26%.

In the prospective expenditures scenario, all of the qualifying services are taken into consideration, and in the CTF one, only those with CTF envelopes are considered. In both cases, we see that the expenditures on documentaries can vary year by year and by broadcast group. The aim of the PNI system is to support under-represented programming, rather than continue its decline. Thus, the rate of documentaries should be higher than the prospective rate and the past rate. DOC proposes 30% as an appropriate rate.

-End of document #1 (1 document of 2 submitted)-