



Entertainment Network

January 11, 2019

Ms. Janet Yale
Chair,
The Broadcasting and Telecommunications Legislative Review Panel
c/o Innovation, Science and Economic Development Canada
235 Queen Street, 1st Floor
Ottawa, Ontario
K1A 0H5

Via e mail: ic.btlr-elmrt.ic@canada.ca

Dear Ms. Yale:

Re: Call for Comments on the Review of the Canadian Communications Legislative Framework.

1. Allarco Entertainment 2008 Inc. (Allarco) is pleased to submit the following comments to the Legislative Review Panel, in response to the notice of consultation, released on September 24, 2018.
2. As the only independent national Pay Television service in Canada (*Super Channel*) we wish to state at the outset that it is critical to our future viability and, to our capacity to continue to contribute to the development and airing of premium Canadian programming, that the government adjust the legislative and regulatory framework to take into account the changing relationship between Canadian consumers, the Canadian broadcasting system, and foreign OTT services, the latter presently operating under no regulatory requirements such as supporting the production and/or exhibition of Canadian content.
3. **Allarco fully supports the position put forward in this procedure by the Independent Broadcast Group (IBG), which represents the views of Canada's independent broadcasters, who must deal daily with a high level of vertically integrated broadcasting entities within the Canadian broadcasting system.**

4. In order to facilitate the review, of all the submissions the Panel will be receiving, we have prepared our comments under two sections (A&B). The first section (A) reviews several critical issues we consider the Panel should consider and a second section (B) responds to specific questions put forward by the Panel in its call for comments. Our objective is to deal essentially with issues surrounding the Broadcasting Act and we leave it to the Panel to resolve the issue of whether we should have one overall legislative proposal, with both aspects of broadcasting and telecommunications under one roof, (much like the British Communications Act of 2003), or if we should retain two specific legislative pieces going forward.
5. As the Review Panel undertook to do its research, on the present state of our broadcasting and telecommunications sectors, it has surely realized that Canada's five major communications corporations (Bell, Rogers, Telus, Shaw, Quebecor) account for approximately 83% of revenues in the Canadian communications sector (broadcasting and BDU undertakings), which leaves little room for independent voices and diversity of sources.
6. As mentioned in the IBG submission, and in the economic report prepared for the IBG by Nordicity Inc., Canadian independent television broadcasters accounted for \$752 million in annual revenue in 2017 which represents 10,6% of the \$6.9 billion in total revenues for the television sector. When we consider CPE expenditures for 2017, the Independent discretionary television services committed \$186 million (73%) towards total CPE expenditures of \$253.3 million whereas conventional broadcasters had a CPE commitment of \$67.3 million (27%). Notwithstanding the above, it is interesting to note that the independent broadcasting sector has seen its revenues drop by 15%, in the last five (5) years, whereas the conventional television sector has seen revenues drop 5%.
7. When we tabulate all the revenue from different activities of the independent broadcasting sector (see Nordicity report files by the IBG), we are looking at a \$2.6 billion contribution to Canada's GDP and represents over 28,000 full time employees.

(A) Critical issues facing the Canadian broadcasting industry

8. Allarco concurs with the Review Panel, that it is a most opportune time for all stakeholders to reflect on what will become of the Canadian broadcasting system - in the digital era. The arrival in Canada of foreign services, such as Netflix and Amazon Prime, has shown us to what extent such services can draw audiences and advertising dollars away from Canadian services. Google and Facebook now garner over 80% of Canadian advertising budgets which represents a tremendous challenge to the Canadian broadcasting system. Advertising as always been key to Canadian conventional and specialty broadcasters being able to contribute to

the availability of Canadian content, both national and local content, within our broadcasting system.

9. It is critically important for the future of the Canadian broadcasting system that the present Review Panel review potential legislative or regulatory measures that could contribute to stabilising the outflow of advertising revenues from our country and broadcasting system.
10. Allarco, much like many other Canadian broadcasters (and especially independent broadcasters), is striving to adapt to changes in online audio and video consumption. It has been our experience that a Canadian broadcasting entity today, must use social media to keep in touch with consumers, and provide flexibility in viewing content through SVoD and on different platforms.
11. In addition, regulatory initiatives such as the recent one by the CRTC concerning the «wholesale code» is an important step in assuring independent Canadian broadcasters are protected against unreasonable restrictions by BDUs on the exploitation of multi-platforms rights. We are of the view that it is critically important for the future of Canadian independent broadcasters to be in a position of developing new distribution models that are not limited to BDU closed networks, in order to serve Canadians who, choose to obtain their programming services “Over the Top”.
12. Allarco joins with the IBG in recommending that the revised broadcasting legislation must ensure that future business models, developed by Broadcasting Distribution Undertaking (BDUs), provide fair non-preferential access to closed distribution networks and in addition, open largely unmediated access to open networks such as the Internet. Such an approach offers the opportunity for Independent broadcasters to have more direct access to Canadian consumers who are increasingly accessing digital content on their tablet, computer, mobile phone, and / or through BDUs.
13. The presence of foreign services being available to Canadian consumers, without any regulatory obligation to contribute to the Canadian broadcasting system, is slowly plundering the capacity of Canadian broadcasters to continue to generate the required revenues to be able to be viable.
14. Increasingly, content rights are problematic for Canadian traditional broadcasters, specialty, and Pay Television services. The capacity of maintaining a distinctive Canadian rights market, especially for non-Canadian content, is becoming more and more difficult. **Maintaining Canadian rights windows requires enough domestic revenue within the broadcasting system to be able to convince rights holders to consider Canada has a distinct Canadian market for their programming.**

15. It is in this context that there are now several international (global) players that are entering the Canadian market under the **CRTC exemption order for new media** which ultimately results in unfair and inequitable competition in our own domestic market. **The present position of the Canadian government permitting such foreign services to enter the Canadian market without any requirements to contribute to the development and exhibition of Canadian content, or any payment of taxes, is unacceptable and in many ways contrary to the objectives of the present *Broadcasting Act*.**
16. As the Panel surely knows, recent industry data on consumer use of the media, clearly shows that younger audiences are no longer watching television or listening to radio the way their parents did. Canadians are increasingly watching or listening to what they want, when and where they want, on an increasing number of technology applications and digital platforms. This is definitely having a dramatic impact on the viability of more traditional media which have supported the existence of the Canadian broadcasting system for over 75 years.
17. Consumer behaviour will continue to migrate towards easy access to content as well as be influenced by cost and the attractiveness of the digital content. Canadians, much like consumers in other territorial markets, are seeking to access prime quality programming and more specialized programming (nature, sports, children, documentaries, drama etc.) through any practical means available. Canadian consumers do not discriminate which source they seek out since their main objective is to view or listen to the content they want.

The challenges for the Canadian market

18. The main challenge for the Canadian broadcasting system, and the Canadian content development sector, is how best to ensure Canadians will continue to have access to Canadian content to view or listen to in the digital universe. **The revised Broadcasting legislation must craft a regulatory framework for the future which provides an equitable market place in which both international and Canadian content providers can operate under the same rules.**
19. A vibrant domestic content creation and distribution market is one where Canadian creators have the opportunity of developing their ideas and projects in a broadcasting market that can contribute to finance such productions, and more importantly, provide access to audiences both locally, nationally and internationally. In such an environment, **the CRTC regulations should ensure that all providers of content on different platforms within Canada, be required to contribute financially, and through access to their distribution platforms, so that Canadian stories and values can be accessible to Canadian and foreign audiences on multiple platforms.**
20. As we mentioned earlier, for new business models to support a vibrant domestic content and distribution market in Canada, a renewed CRTC will have to ensure

regulations consider the present imbalance that exists between BDUs, that control access to their distribution systems, and Canadian independent broadcasters, content aggregators and distributors, that are seeking access to audiences. **Looking to the future, both the new legislation and the CRTC, must ensure not only open access to open networks but also access to closed networks and platforms.**

21. If the federal government considers it is important for Canadians to be able to develop digital programming that tells our stories and shares our values, both with domestic consumers and also with international partners, we have to find regulatory measures which will ensure Canadian creators can continue to access the required funding to develop world class content and also have access to Canadian audiences through a diversity of Canadian and foreign content distributors.
22. In addition, **the federal government and the regulator should immediately review its exemption order with regards to new media services such as foreign based content aggregators, who enter the Canadian market freely.** Many industry organisations, including the CMPA, the Director's Guild and the CMF, have in the past called on the CRTC and the federal government to require such services contribute, not only to the production of Canadian content, but also provide a window for Canadian programming on their delivery platforms. Such foreign services should also be required to collect the sales tax associated with the reception of such services in the Canadian market.

The pressing need to deal with increased piracy in the marketplace

23. Furthermore, Allarco salutes the initiative of an impressive array of Canadian cultural and communications organisations that have joined forces (Allarco is a member) in the *FairPlay Canada* initiative, which called on the CRTC, and the federal government, to undertake in earnest **a review of the increasing piracy of content in the Canadian market.** This piracy is growing exponentially and the cost to the Canadian broadcasting system represents millions of dollars in lost revenue.
24. **The Review Panel, and the federal government, must take this issue seriously** and look beyond outcries from consumers, who want everything to be free, and imagine that when they go to the Internet everything should be easily accessible with no direct cost associated with the content. There is no two ways to look at this question: **piracy is the act of stealing content.**
25. Individuals involved in piracy are increasingly using Android set top boxes to access content illegally. Entrepreneurs receive programming content (lawfully) distributed by BDUs and then proceed to redistribute those signals by means of servers and the Internet (including peer to peer applications), without making any payment of subscription fees to the lawful rights holders of the content being stolen. In the end, the (stolen) program content is accessible by people who

purchase Android set top boxes. In many cases, those involved in the theft of program content, re-sell the pilfered material to the owners of the Android boxes, through subscriptions. Thereby depriving the Canadian BDUs, the Canadian programming services, and the program rights holders of revenue.

26. Allarco wishes to remind the Review Panel, and the government, that the Canadian broadcasting system faced piracy of satellite signals in the 1990's and early 2000's. That piracy was successfully curtailed through changes to Canadian legislation and enforcement of the law.
27. We believe that the proliferation of pirated Android devices has the potential to replicate the harm that accrued to BDUs and programming services more than a decade and a half ago. **Anti-piracy legislation must be updated, both by way of the Copyright Act, and the Broadcasting and Telecommunications Acts, to provide effective tools for anti-piracy enforcement.**

(B) **Responses to specific questions of the Review Panel (appendix B of Terms of Reference)**

28. Question no. 8.1

How can the concept of broadcasting remain relevant in an open and shifting communications landscape?

Response:

It is our view that immediate action is required to bring online services into the Canadian broadcasting system and especially ensure that they contribute to not only the development of Canadian content but that they also commit to distributing such Canadian content on their platforms and programming services which operate within Canada. **In other words, the federal government should move to amend the existing Broadcasting Act in earnest to include Internet online services within the existing legislative framework.** The speed with which services such as Netflix and Amazon Prime are entering the Canadian marketplace is seriously impacting the regulated programming services that contribute daily towards meeting the objectives of the *Broadcasting Act*. We cannot wait two or three years until a full legislative review can take place. The damage being done to the Canadian broadcasting system is already quite extensive and while we agree a full review of legislation may be appropriate the critical question of integrating online services to our broadcasting system has reached a critical point and should be acted on sooner than later.

29. Question no. 9.1

How can the objectives of the Broadcasting Act be adapted to ensure that they are relevant in today's more open, global, and competitive environment?

Response:

By ensuring that online programming services that operate in Canada, and who are syphoning hundreds of millions of dollars from the Canadian broadcasting system, be obliged to become registered participants to our broadcasting system by contributing to financing and distributing Canadian content.

In addition, **Broadcasting Act objectives should recognise the important contribution of independent broadcasters to the Canadian broadcasting system and specify their contribution to ensuring diversity not only in terms of ownership but also in terms of programming.**

30. Question no. 9.2

Should certain objectives be prioritized? If so, which ones? What should be added?

Response:

Existing objectives still are appropriate, as presented in the present *Broadcasting Act*, and we would not consider establishing one objective as being more important than others. What is needed is the recognition of major changes in the way Canadians access the programming they want to watch **and the need to ensure the Broadcasting Act recognises the important role of Canadian independent broadcasters.** The objectives of the Act should also clearly recognise the importance of integrating online programming services as part of the Canadian broadcasting system and as such contributing to the objectives of the *Broadcasting Act*.

31. Question no. 10.1

How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production, and distribution of Canadian content?

Response:

By ensuring that all services that offer programming services, be they through over the air, cable, satellite or Internet they should be considered part of the Canadian broadcasting system and as such should, on an equitable basis, be contributing to the creation and distribution of Canadian content.

32. Question no. 10.2

How can the CRTC be empowered to implement and regulate according to al modernized Broadcasting Act in order to protect, support, and promote our culture in both official languages?

Response:

By changing section 2 of the Broadcasting Act by adding:

“online services means a distribution undertaking or programming undertaking that receives and retransmits broadcasting or transmits programs by means of the Internet.”

33. Question no. 14.1 & 14.2

Does the Broadcasting Act strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?

What is the appropriate level of government oversight of the CRTC broadcasting licencing and policy decisions?

Response:

The present framework, which provides for an appeal of CRTC decisions at the Cabinet level, and / or the Federal Court of Appeal, still seems appropriate as does the Power of direction which permits the government to require the CRTC to undertake specific research and consultations in areas under its responsibility. These mechanisms have worked well in the past and there does not seem to be any need for changes at this time.

34. Questions no. 14.3 & 14.4

How can a modernized Broadcasting Act improve the functioning and efficiency of the CRTC and regulatory framework?

Are there tools that the CRTC does not have in the Broadcasting Act that it should?

Response:

The revision of the language found in the *Broadcasting Act* needs to clearly state that the Act applies to online services that offer services to the public in Canada regardless of the location of any facilities of the online service provider. Furthermore, there should be language that says that online services must contribute substantially to the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.

Conclusion

35. Allarco recommends the Review Panel update the broadcasting policy objectives in any proposal to amend the *Broadcasting Act* or in any new Act, to:

- Recognise online services as being part of the Canadian broadcasting system and require that such services contribute to the production and carriage of Canadian programming.

36. In addition, broadcasting policy objectives should reflect the role of the independent broadcasting sector as an important contributor to the diversity of voices and diversity of ownership which contributes to fostering innovation and creativity.

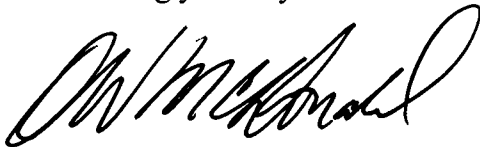
37. Much like the IBG, Allarco supports many of the proposals put forward by the CRTC in its *Harnessing Change* report issued May 31st, 2018 which recommended:

- Bringing online services into the broadcasting system so that they may make an appropriate contribution to broadcasting policy objectives.
- Potentially streamlining licensing procedures to lighten the administrative and regulatory burden on licensees and the Commission. Any such tools should also provide for regulatory certainty for licensees.
- Giving the Commission the explicit authority to regulate the collection and use of programming data and explicitly recognising in the *Broadcasting Act* the privacy rights of individuals concerning their own personal information.
- Providing the Commission with additional licensing tools - such as service agreements - to enable regulation at the enterprise rather than service specific level. Such agreements should be subject to section 28 of the Broadcasting Act in the same manner as licensing decisions.

38. Allarco believes the Commission should have the requisite authority and tools to support a healthy domestic market and be able to regulate economic relationships between licensed undertakings. The CRTC's authority concerning dispute resolution should apply to disputes between all types of undertakings and not be limited to disputes between BDUs and programming services. The scope of dispute resolution should be expanded to include all types of disputes and not be limited to only disputes about carriage of programs.

39. This concludes the comments of Allarco with regards to the Panel review of Canada's communications legislative framework and we are of course available should the Review Panel, require any additional information - or wish to have a meeting - in the coming months.

Thanking you for your consideration,



Don McDonald, CPA, CGA
President & CEO

----- End of document -----