



Petition to the Governor in Council

Pursuant to s. 28(1) of the Broadcasting Act

To Set Aside or Refer Back for Reconsideration

BROADCASTING DECISION CRTC 2022-165: Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals

Submitted by:

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (IATSE)

August 5, 2022

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Introduction

1. This is a Petition by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada ("IATSE") to His Excellency the Governor in Council pursuant to section 28 of the *Broadcasting Act* (Canada), S.C. 1991, c. 11 (the "Broadcasting Act"). This Petition is made with respect to the majority decision of the CRTC to renew the licence of CBC/Radio-Canada in Broadcasting Decision CRTC 2022-165 (the "Majority Decision of the CRTC" and/or "CRTC Decision").
2. The IATSE is an international labour union representing the majority of behind-the-scenes workers in the film, television, and digital media industries. It was created before film was invented, chartering its first local union on Broadway in 1893 and expanding into Canada in 1898. Now the largest union in the entertainment industry, the IATSE has over 161,000 members - 34,000 of whom are in Canada. The vast majority of these highly skilled creatives work in the film and television sector and are the cinematographers, costume designers, set decorators, scenic artists, camera drone pilots, makeup artists, lighting technicians, and props builders, amongst many, many other positions. In a word, we are the crew.
3. The IATSE is generally supportive of Majority Decision of the CRTC's attempts to set out policies and regulations which address the rapidly changing digital environment. More specifically, the IATSE supports the imposition of expenditure requirements dedicated to programming by content creators who are members of equity-seeking communities and the introduction of an expenditure-based approach which encompasses traditional broadcast platforms as well as digital media broadcasting undertakings. IATSE views these to be progressive and appropriate policy initiatives.

IATSE's Support of the Joint Petition filed by AQTIS Local 514 of the IATSE et al.

4. The IATSE has reviewed and supports the joint Petition filed by AQTIS Local 514 of the IATSE, UDA, ARRO, SARTEC and the DGC and adopts the submissions contained therein.

IATSE's Concerns with the Majority Decision of the CRTC

The Elimination of Historical Conditions of Licence

5. The IATSE does not support the Majority Decision of the CRTC to eliminate a number of important historical conditions of licence for the CBC relating to its exhibition of television content. In the IATSE's respectful view, the elimination of the CBC's historical conditions of licence based on the CBC's compliance history unnecessarily and improperly risks the continuation of local programming that is vital to communities across Canada. The elimination of these historical conditions of licence also effectively eliminates the ability of the CRTC to ensure the CBC fulfills its mandate contemplated in section 3(1) of the *Broadcast Act* on a go-forward basis as well. The IATSE's concerns in this regard are amplified by the fact that these eliminations are coming to pass at a point in time when the legal landscape governing online undertakings contemplated in the Bill C-11 amendments to the *Broadcasting Act* have yet to be settled and the CBC's delivery of content through digital platforms are almost certainly going to increase over the licence renewal term.

The Adoption of a Percentage of Program Expenditure Model

6. The IASTE does not support the percentage of program expenditure model for Canadian Programming Requirements adopted by Majority Decision of the CRTC. At paragraph 61 of the Majority Decision of the CRTC, the majority states:

61. Given that the CBC's revenues are largely dependent on government funding, and given that its goal is not to be profitable in the same way most private broadcasters strive to be, the Commission finds that the best CPE approach for the CBC would be for its required expenditures to represent a percentage of total programming and production expenditures rather than be based on gross revenues of the previous broadcast year. Further, to allow the CBC to adapt its programming strategies to the evolving viewing habits of Canadians during the next licence term, the Commission is granting the CBC the flexibility to count expenditures devoted to Canadian programming made for its DMBUs in order to fulfill these expenditure requirements imposed on its licensed services.

7. The rationale for basing Canadian Programming Requirements as a percentage of program expenditures rather than total revenues from the previous year is flawed. Firstly, the CBC's dependence on government funding and its lack of a profit motivation is not new or unique and is not a basis upon which to change the status quo. Secondly, and perhaps more importantly, however, the majority's approach creates a scenario of uncertainty as the proposed formula is less transparent and can be subject to manipulation. Basing the level of CPE as a percentage of an expenditure figure is a dramatic step backward for not just the CBC but the entire ecosystem of the industry.

The Failure to Set Minimum Legal Obligations for Canadian Independent Productions

8. The IATSE also notes with great concern that the Majority Decision of the CRTC fails to set out any minimum legal obligations regarding the broadcast of Canadian Independent Productions and, instead, only references expectation in relation to independently produced programs. As noted in the following excerpt in the Dissenting Decision of Commissioner Monique Lafontaine at page 29, an expectation does not create a legal obligation:

While the majority decision includes a number of expectations regarding independently produced French- and English-language programs in the Corporation's licences, expectations are not legal obligations imposed on the Corporation, and have no force of law, as stated earlier. An expectation is also not enforceable in the same manner as a condition of licence under the Broadcasting Act, such as pursuant to section 25 should compliance issues arise during the Corporations' next licence term.

The Failure to Properly Support PNI

9. The Majority Decision of the CRTC fails to properly recognise the need to support and maintain Programs of National Interest (PNI). The elimination of exhibition-based conditions for PNI for the CBC conventional television is a mistake. While exhibition mandates are not appropriate for digital based platforms, they continue to be appropriate for traditional distribution models.
10. PNI is an area for the CBC, as the National Public Broadcaster, to take a role of leadership to support and nurture those seeking to create distinctive and creative Canadian programming.

The Failure to Impose Certain Licencing Obligations on Radio Canada

11. The Majority Decision of the CRTC also failed to impose any licencing obligations on Radio Canada for the broadcast of French language youth and children programming. This is a clear inconsistency with subparagraph 3(l)(m)(iv) of the *Broadcasting Act* which cannot be explained away by references to streaming services and expenditure requirements. Traditional broadcast remains a significant platform for children to access this programming.

Conclusions

12. For all the reasons set out above, the Majority Decision of the CRTC is inconsistent with the policy directives of the *Broadcasting Act* and fails to advance the public interest. It also fails the Independent Production Community and, if left untouched, could threaten the stability of an entire industry and harm the working men, women and kin who not only thrive artistically but are able to make a living working their chosen fields of endeavour.
13. On behalf of its 34,000 members, the IATSE urges the Governor in Council to set aside the Majority Decision of the CRTC for all the reasons set out above and refer that matter back to the CRTC for reconsideration following additional hearing dates.

Respectfully Submitted.