



21 August 2015

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed electronically

Dear Secretary General,

Re: *Amendments to YTV's conditions of licence pursuant to Broadcasting Regulatory Policy CRTC 2015-86, (Application 2015-0726-3, 13 July 2015)*

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system that serves the public interest.
 - 2 We are submitting comments about the above-noted application by Corus Entertainment Inc. (Corus) to amend seven conditions of the licence for YTV, on the grounds that their elimination reflects the CRTC's termination of genre exclusivity in Broadcasting Regulatory Policy CRTC 2015-86.¹ In brief, FRPC opposes Corus' request that the CRTC remove a condition of licence requiring YTV to broadcast at least 90 hours/year of original Canadian content: the request is inconsistent with BRP 2015-86; Corus has offered no evidence to support its request, and the request's approval will encourage other broadcasters to seek amendments not contemplated by the new policy.
- I Corus' application to amend YTV's conditions of licence**
- 3 Corus' proposals for its current conditions of licence are as follows:

¹ Para. 254:
Accordingly, the Commission will eliminate the genre exclusivity policy and related protections for all English- and French-language discretionary services. New or existing services that wish to offer programming from formerly protected genres may do so immediately. The Commission will no longer enforce conditions of licence relating to nature of service, aside from those exceptions noted above. Existing discretionary services, other than those benefitting from a 9(1)(h) order, may apply to delete conditions of licence relating to their nature of service immediately, with the exception of those conditions related to maximum amounts of sports programming.

YTV Current COL	YTV proposed condition of licence
2 (a) The licensee shall provide a national English-language specialty Category A service targeted to children, youth and their families. In each broadcast year, a minimum of 78% of the programming distributed on the service shall have as its target audience children and youth up to 17 years of age, and a maximum of 22% shall have as its target audience families. In each broadcast year, a maximum of 15% of the programming distributed on the service shall have as its target audience children up to 6 years of age.	<p><i>[Corus asks that these conditions be replaced by the following text:]</i> <i>The licensee shall provide a national English-language discretionary service targeted to children, youth and families including live-action comedies, drama, reality, movies and animation</i></p>
2 (c) The licensee shall devote 100% of the programs in the drama category distributed in the evening broadcast period to programs of particular interest to children, youth and their families through the use of a protagonist that is developed with children, youth, or families in mind, examples of which would include an animated character super hero, animal, child or youth.	
2 (d) Programming distributed by the licensee with families as the target audience shall not include programs from the following categories set out in item 6 of Schedule I of the <i>Specialty Services Regulations, 1990</i> : News (category 1), Analysis and interpretation (category 2(a)), Sports (category 6) or Music Video clips (Category 8(b))	
2 (e) The licensee shall devote no more than 5% of the broadcast year to Music video clips (category 8(b)).	
2 (f) The licensee shall devote no more than 10% of the broadcast year to feature films (Category 7(d))	
2 (b) The licensee may draw programming from all the categories set out in item 6 of the Schedule I to the <i>Specialty Services Regulations, 1990</i> , as amended from time to time.	<p><i>[Replace 2(b) with:] A 10% limitation on live professional sports programming in each month is required.</i></p>
13. In each broadcast year, the programming distributed by the licensee shall include a minimum of 90 hours of original, first-run Canadian programs that have been acquired from an independent production company by YTV, either through co-production or licensing arrangements.	<p><i>[Corus asks that condition 13 be deleted]</i></p>

Source: Corus application, Appendix 1

4 FRPC has no comment on six of the seven changes, as they reflect the CRTC’s new policy to replace detailed programming service descriptions with brief service descriptions.

5 As for the seventh change, Corus wants the CRTC to drop condition 13 from YTV’s licence:

In each broadcast year, the programming distributed by the licensee shall include a minimum of 90 hours of original, first-run Canadian programs that have been acquired from an independent production company by YTV, either through co-production or licensing arrangements.

6 We estimate that 90 hours/year represents 1.03% of a broadcast year of 24-hour days.²

7 Corus says that approval of its requests, including the elimination of condition 13, will not affect YTV’s financial viability,³ and will not change YTV’s programming.⁴ Corus has not explained why condition 13’s removal is necessary if its removal will not affect YTV’s programming, and it has not made any commitments about the level of original, first-run Canadian programs that YTV would broadcast in the absence of condition 13.

8 FRPC opposes this change, for two reasons. First, Corus’ argument that the CRTC’s 2015 television policy permits it to drop the long-standing requirement for YTV to offer very young

² 24 hours in the day, times 365.25 days in the year = 8,766 hours/year.

³ S. 4.2 of Form 301.

⁴ *Ibid.*, s. 3.1(e).

and young Canadians a minimum level of new Canadian programming is incorrect: Broadcasting Regulatory Policy CRTC 2015-86 actually states very clearly that the CRTC will only consider setting Canadian exhibition levels in the next set of licence renewals, now scheduled for 2017. Second, the absence of any commitment to new Canadian programming means that the service could morph from one that was supposed to give young Canadians access to new and interesting programs about their country, into a repeat channel even more focussed on American programming.

- 9 We set out our arguments against Corus' request to stop broadcasting at least 90 hours a year of original Canadian programming below, after a brief review of YTV's licensing history and financial performance.

II Context for YTV's requests

- 10 YTV is 28 years old, having been one of the first 'legacy' specialty services licensed by the CRTC in 1987.⁵ Originally owned by a diverse group consisting of cable companies, producers, a survey research company and investors, YTV has been owned by Shaw (through Corus) since 1996, or for more than half its existence (see Table 1).

Table 1: YTV ownership over time

1987 – first licence	1994 (July)	1994 (Nov)	1995	1996	2000
CUC (25%) Rogers (25%) Appletree Prod's (12%) Jon Slan (7.3%) Canamedia Prod's (5%) Decima (5%) Cablecasting (5%) Ten investors (11%) YTV management plan (3%)	Rogers (28%) CUC (28%) Atlantis (41%) YTV management plan (3%)	Rogers (34%) CUC (34%) 1068308 (28%) YTV management plan (3%)	Rogers (34%) Shaw (34%) Atlantis Kids (28%) YTV management plan (3%)	Shaw (100%)	Shaw (100%) through Corus
Decision CRTC 87-903	A94-0094	Decision CRTC 94-886	Decision CRTC 95-57	A96-0091	See Decision CRTC 2000-222

- 11 The CRTC has renewed YTV's licence four times since it launched, in 1992,⁶ 2000,⁷ 2006⁸ and, most recently, in 2011.⁹

A YTV and Canadian programming

- 12 Original Canadian content has been an integral part of YTV's programming since the service was first described to the Commission. In 1987 YTV said that two of its five programming goals involved Canadian programming: it wanted "to increase children's chances to appreciate Canadian heritage through a wider window on Canada" and "to increase children's chances to see regional expressions of Canadian culture".¹⁰ YTV therefore committed to offer at least 40

⁵ *YTV Canada, Inc. – 871209300*, Decision CRTC 87-903 (Ottawa, 1 December 1987) (see "Programming").

⁶ Broadcasting Decision CRTC 92-571, <http://www.crtc.gc.ca/eng/archive/1992/DB92-571.HTM>.

⁷ Broadcasting Decision CRTC 2000-140, <http://www.crtc.gc.ca/eng/archive/2000/DB2000-140.htm>.

⁸ Broadcasting Decision CRTC 2006-381, <http://www.crtc.gc.ca/eng/archive/2006/db2006-381.htm>.

⁹ Broadcasting Decision CRTC 2011-441.

¹⁰ Decision CRTC 87-903 ("Programming").

hours of original first-run Canadian programming in its first year of operations, and at least 69 hours/year by year 5.

- 13 The CRTC took YTV's proposals about original Canadian content so seriously that it imposed original programming requirements by condition of licence. It not only required YTV to broadcast 55 hours/year of original first-run programming by year 3, but said that it expected that YTV's renewal application would "increase substantially the amount of new Canadian material" that it would broadcast.¹¹
- 14 When YTV's owners applied to renew its licence in 1992, they committed to broadcast 60 hours of original first-run Canadian programming in the first year of their renewal, and to raise this "by five additional hours each year to a level of 90 hours in the seventh year."¹² The CRTC again imposed these commitments as a condition of licence, and added the requirement that YTV obtain this programming from the independent production sector.¹³
- 15 The Commission has maintained the 90 original hours/year requirement for 22 years, since 1993. In 2000¹⁴ and 2006¹⁵ it attributed its decision not to ask YTV to broadcast more hours of first-run Canadian programs to money: it was also denying YTV's requests for wholesale rate increases. Although the Commission commented in YTV's 2006 renewal that raising profitable specialty service broadcasters' Canadian programming requirements "would penalize their financial success and undercut their motivation to continue pursuing increased profit margins"¹⁶ – it nevertheless raised YTV's Canadian programming expenditures from 35% to 40% given YTV's profitability (PBIT margin of between 30% and 34%).¹⁷
- 16 In 2011¹⁸ the CRTC reinstated the 90 original hours/year requirement as a condition of licence, although Corus had proposed its removal.¹⁹ While the YTV renewal decision offered no reasons on this point, the CRTC's introductory decision to the 2011 renewals explained that its group-

¹¹ Broadcasting Decision CRTC 92-571.

¹² *YTV Canada, Inc.*, Broadcasting Decision CRTC 92-751, (Ottawa, 17 August 1992), <http://www.crtc.gc.ca/eng/archive/1992/DB92-571.HTM>.

¹³ *Ibid.*, condition of licence 8.

¹⁴ *YTV Canada Inc.*, Decision CRTC 2000-140 (Ottawa, 4 May 2000), <http://www.crtc.gc.ca/eng/archive/1992/DB92-571.HTM>, condition of licence 9.

¹⁵ *YTV Canada Inc.*, Broadcasting Decision CRTC 2006-381, (Ottawa, 18 August 2006), <http://www.crtc.gc.ca/eng/archive/2006/db2006-381.htm>, Condition of licence 7.

¹⁶ *Ibid.*, at para. 85:

Traditionally, the Commission has considered it appropriate that a broadcaster's profitability be taken into account when assessing the contribution it should be called upon to make to the Canadian broadcasting system. At the same time, the Commission is of the view that it would be unfair and, over the long term, potentially counter-productive, to increase the requirements imposed on profitable specialty licensees to a degree that would penalize their financial success and undercut their motivation to continue pursuing increased profit margins.

¹⁷ *Ibid.*, para. 87.

¹⁸ *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, (Ottawa, 27 July 2011), <http://www.crtc.gc.ca/eng/archive/2011/2011-446.htm>, condition of licence 13.

¹⁹ See Broadcasting Notice of Consultation 2010-952, Application 2010-1344-0.

licensing policy did not “contemplate lower Canadian exhibition requirements for specialty services.”²⁰

- 17 To better understand Corus’ request regarding condition of licence 13, FRPC reviewed YTV’s program logs for 2006 and 2014. As our goal was not to evaluate YTV’s compliance with its condition of licence, but to appreciate YTV’s scheduling of original Canadian programming, we analyzed the logs for one month in each year – September.
- 18 In September 2006 and 2014, YTV broadcast 868 and 881 hours of programming, respectively (see Table 2).²¹ The service was off-air very briefly (18 minutes) in September 2014 for technical reasons.

Table 2: YTV programming in 2006 and 2014

Log code	Log code meaning	September 2006		September 2014	
		Hours	% of total	Hours	% of total
PGR	Program	694.6	80.0%	636.9	72.3%
PFS	Program First Segment	0.0	0.0%	31.1	3.5%
SEG	Segment		0.0%	45.6	5.2%
MVC	Music Video Clip		0.0%	0.4	0.0%
	<i>Subtotal, programs</i>	<i>694.6</i>	<i>80.0%</i>	<i>714.0</i>	<i>81.0%</i>
PRC	Promotion - Canadian program	22.2	2.6%	43.2	4.9%
PRO	Promotional	3.5	0.4%		0.0%
COM	Commercial message	111.1	12.8%	112.8	12.8%
PGI	Infomercial	15.0	1.7%	5.2	0.6%
SPO	Sponsorship message	2.3	0.3%	0.1	0.0%
PSA	Public Service Announcement	0.6	0.1%	0.4	0.0%
ID	Licensee identification	9.4	1.1%	4.9	0.6%
INT	Interstitial	9.7	1.1%	0.1	0.0%
OFT	Off Air (Technical)		0.0%	0.3	0.0%
	All programming	868.4	100.0%	881.2	100.0%

Source: YTV program logs for September 2006 and September 2014

- 19 The CRTC’s program log codes for ‘exhibition’ distinguish between programs that are aired for the first time in the broadcasting system (‘first run’), those aired for the first time on YTV (‘first run on YTV’), and those that have been aired previously by another television service (‘repeat’). We grouped both types of first-run programs together to count the number of ‘original’ programs on YTV (see Table 3).
- 20 The number of hours of original programs broadcast by YTV decreased 72% between 2006 and 2014: from 112.4 hours in September 2006, to 31.4 hours in September 2014. The hours of original Canadian content broadcast by YTV also decreased, by just over two thirds (69.8%):

²⁰ Broadcasting Decision CRTC 2011-441, at para. 111.

²¹ The program logs for both 2006 and 2014 begin at 6 am on September 1st, and continue past midnight on September 30th to 5:59:59 am on October 1st. The logs describe the start and end times of each program, as well as their duration in hours, minutes and seconds. FRPC calculated the decimal duration of each program by adding its hours to its minutes (divided by 60) and its seconds (divided by 3600).

from 43.5 hours in September 2006, to 13.2 hours in September 2014. The hours of repeat programs broadcast by YTV grew 8.6% between September 2006 (582.2 hours) and September 2014 (632.1 hours): 83.8% of YTV's programs were repeats in 2006, and 95.3% were repeats in 2014.

Table 3: Original and repeat program hours on YTV, by origin, in 2006 and 2014

'Exhibition' (original vs repeat)	September 2006		September 2014				
	Program (PGR) hours	% of total	Hours of programming				% of total
			MVC	PFS	PGR	Total	
First run							
Canada	19.2	2.8%		0.4	4.2	4.6	0.7%
US	19.1	2.7%	0.3	2.7	14.9	17.9	2.7%
France	1.6	0.2%					
Other	23.8	3.4%					
Subtotal, first run	63.8	9.2%	0.3	3.1	19.2	22.6	3.4%
First run on YTV							
Canada	24.3	3.5%			8.5	8.5	1.3%
US	24.3	3.5%		0.4		0.4	0.1%
Subtotal, first run on YTV	48.6	7.0%		0.4	8.5	8.9	1.3%
'Original' (first run + first run on YTV)							
Canada	43.5	6.3%	0.0	0.4	12.7	13.2	2.0%
US	43.3	6.2%	0.3	3.1	14.9	18.3	2.8%
France	1.6	0.2%					
Other	23.8	3.4%					
Subtotal, 'original'	112.4	16.2%	0.3	3.5	27.7	31.4	4.7%
Repeat							
Canada	295.4	42.5%		4.5	288.8	293.2	44.2%
US	186.3	26.8%	0.1	23.2	315.5	338.8	51.1%
France	2.2	0.3%					
UK	2.4	0.3%					
Other	95.9	13.8%					
Subtotal, repeat	582.2	83.8%	0.1	27.7	604.3	632.1	95.3%
Total	694.6	100.0%	0.4	31.1	632.0	663.5	100.0%

Source: YTV program logs for September 2006 and September 2014

- 21 Finally, we note that in September 2006 YTV's original content was drawn from Canada, the United States, France and elsewhere. By September 2014 all of YTV's original programming came from Canada and the US.

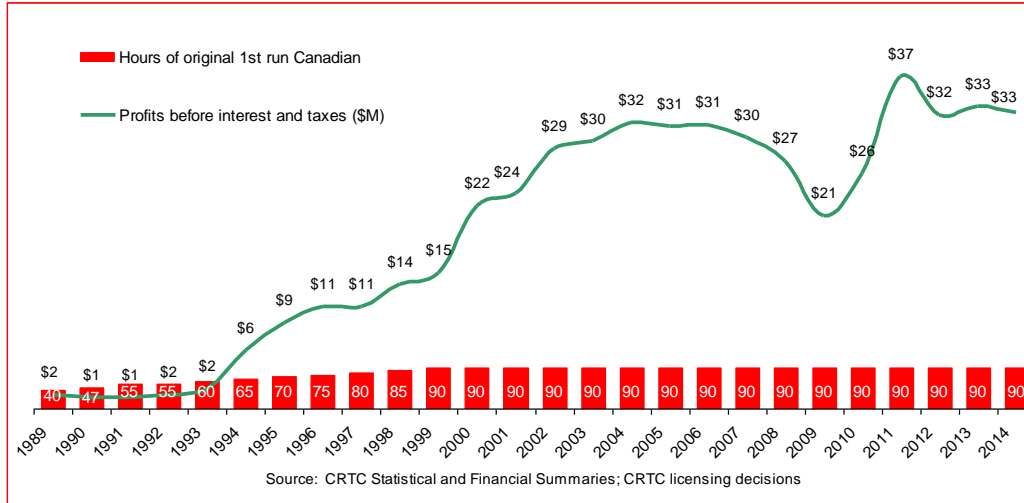
B YTV's financial performance

- 22 In 2011 the CRTC commented that YTV had been "very profitable under the current conditions of licence"²² which set the rates it was permitted to charge cable and satellite distributors. Since 2011 YTV has been free to negotiate those rates.

²² Broadcasting Decision CRTC 2011-446 at para. 40.

23 In fact, over its 28-year existence YTV has earned \$1.7 billion in revenues, of which nearly half a billion – \$437 million – were profits before interest and taxes (see Figure 1).

Figure 1: YTV’s profits before interest and taxes, and hours of first-run original Canadian content



24 Since the 90-hour/year of original first-run Canadian programming requirement was imposed in 2000, YTV’s profit margin has never dipped below 26% (see Figure 2).

Figure 2: YTV’s PBIT margin and hours of first-run original Canadian content

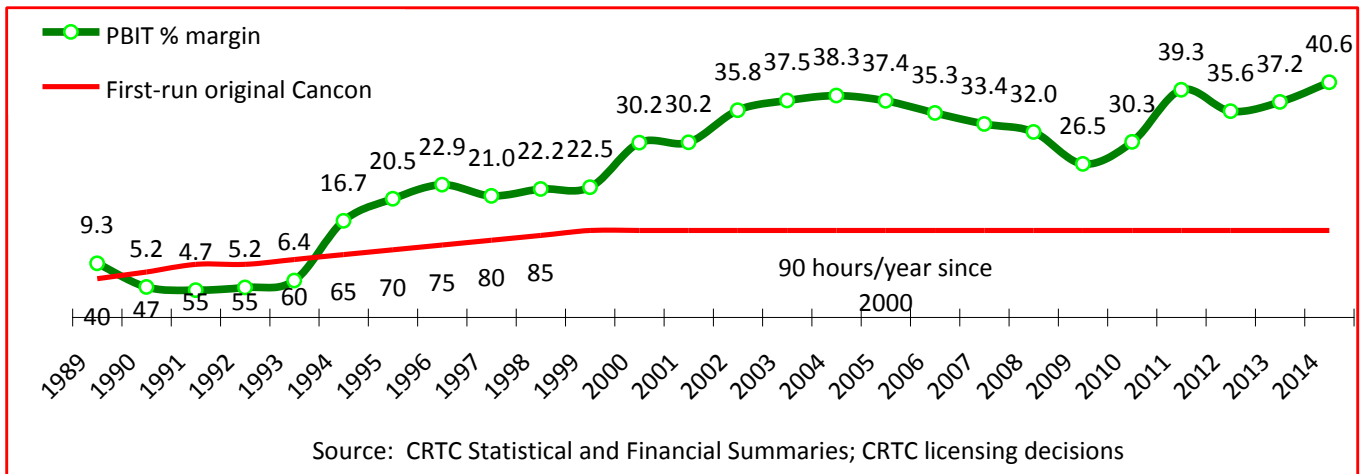
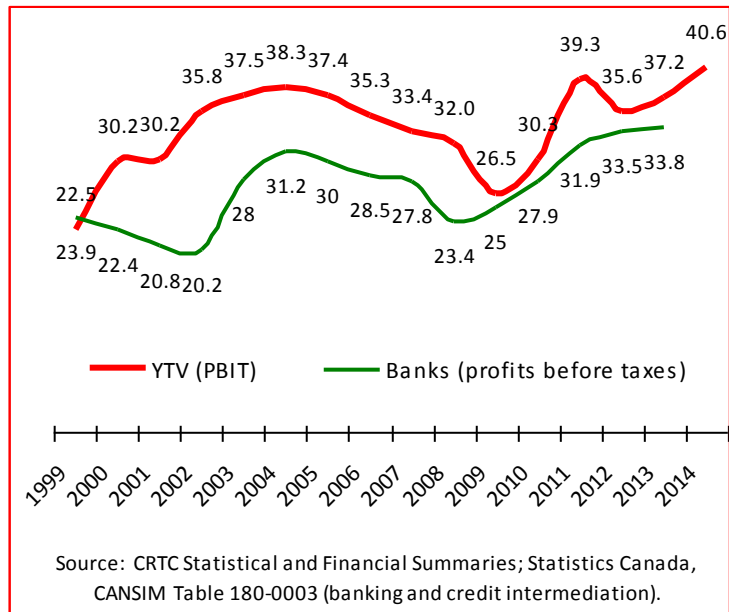


Figure 3: Profit margins of banks and YTV, 1999-2014



25 In fact, from 2000 to 2013 YTV’s profit margins were roughly the same as or above those of Canada’s banks, often thought to be very profitable (see Figure 3).

III Corus argument for dropping original first-run programming from YTV

26 Corus’ entire argument for dropping YTV’s requirement to air 90 hours/year of original Canadian content is that removal would be consistent with the CRTC’s decision in Broadcasting Regulatory Policy CRTC 2015-86 to stop enforcing conditions of licence relating to nature of service.²³

27 This is a disingenuous and highly selective interpretation of the 2015-86 policy.

28 In discussing genre protection Broadcasting Regulatory Policy CRTC 2015-86 described genre exclusivity as “programming of a specific type from specific program categories or relating to certain subjects.”²⁴ As an experienced broadcaster, Corus knows that YTV’s requirements to broadcast original Canadian program hours relate to the issue of the programs’ origin,²⁵ not to

²³ Corus application, covering letter, para. 1.

²⁴ Broadcasting Regulatory Policy CRTC 2015-86, at para. 232:

The genre exclusivity policy is a key component of the current regulatory framework for the television system. Under this policy, select specialty and pay services, referred to as Category A services, are licensed on a one-per-genre basis. These Category A services are licensed to provide programming of a specific type from specific program categories or relating to certain subjects. The genres are intended to be defined in such a way that the Category A services are complementary and do not compete head-to-head with one another. These include, for example, a history service, a premium movie service and a travel service. ...

²⁵ Schedule I of the *Specialty Services Regulations, 1990* provides 7 separate codes for “Origin” which include Canada, United States, United Kingdom and France.

the general subject of its programming or the categories of programming from which the hours are drawn.²⁶

- 29 Moreover, while Broadcasting Regulatory Policy CRTC 2015-86 said that the CRTC may allow Canadian exhibition requirements to be reduced, it went on to say that such decisions would *only* be made during the next licence renewals now scheduled for early 2017, and in conjunction with discussions about licensees' Canadian programming expenditure commitments.²⁷ The CRTC did not invite broadcasters to apply to drop their Canadian content exhibition requirements, as Corus claims: to the contrary, the Commission even warned that it may not apply this requirement to all services in the 2017 renewal process – in particular, it said it might treat services offering children's and youth programming differently.²⁸
- 30 Finally, we note that after it filed the application to drop YTV's requirement to broadcast 90 hours of original Canadian programming, Corus announced that it has now obtained the rights to the Walt Disney company's content in Canada.²⁹
- 31 Maintaining condition of licence 13 ensures that the miniscule part of the YTV schedule – 1% of the entire year – now set aside for original Canadian content, will continue to be used for that purpose.

IV Conclusion and recommendation

- 32 The CRTC should deny Corus' application to drop its current requirement to broadcast 90 hours/year of original Canadian programming on YTV.

²⁶ Schedule I of the *Specialty Services Regulations, 1990* lists 15 categories of programming, ranging from Information to Filler programming.

²⁷ Broadcasting Regulatory Policy CRTC 2015-86, bold font added:
195. With respect to overall broadcast day requirements for discretionary services, in light of the Commission's determinations with respect to genre and standardization of licence classes set out later in this regulatory policy, the Commission considers a standardized approach to these requirements for all discretionary services appropriate. Further, **given the Commission's determination set out below to apply CPE requirements to all of these services, at the next licence renewal of each service**, the Commission will set overall daily exhibition requirements for discretionary services at a standard level of 35%, which is the current requirement for Category B services that have been in operation for at least three years.

...

198. As noted above, **reductions in exhibition requirements will be implemented through conditions of licence at the next licence renewal for each service and will take place in conjunction with the changes to CPE requirements set out below. For the services owned by the English- and French-language large private ownership groups, this will take place at licence renewal, by 31 August 2017.** For the independent services, this could take effect as early as 1 September 2018, depending on their licence expiry dates.

²⁸ *Ibid.*, at para. 196, bold font added:

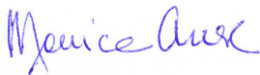
The Commission recognizes that **there may be services which will require a more individual approach to exhibition requirements. As an example, peak viewing periods are different for children's and youth programming.** These particular circumstances will be considered at licence renewal on a case-by-case basis as required. ...

²⁹ "Corus' Disney Channel coming next month", *The Wire Report* (11 August 2015), <http://www.thewirereport.ca/briefs/2015/08/11/corus-disney-channel-coming-next-month/29941>.

- 33 Contrary to Corus' claims, approval would be inconsistent with Broadcasting Regulatory Policy CRTC 2015-86.
- 34 Equally important, Corus has offered no evidence to justify approval. It has not established that condition of licence 13 imposes any burden on the service. We note that YTV's staggeringly strong financial performance establishes not just that it can afford to provide 90 hours/year of Canadian programming to young Canadians, but that it could and should provide significantly more of these hours.
- 35 In our view, and as Corus has also not committed to maintain the current levels of original Canadian content in YTV's schedule,³⁰ removing condition of licence 13 raises the risk that it will continue to reduce Canadian content on YTV: YTV's program logs already show that 69.7% fewer hours of original Canadian programs were broadcast in September 2014 compared to September 2006, and that the level of repeats broadcast by YTV in this period grew by 8.6%.
- 36 Finally, FRPC respectfully submits that the CRTC should deny this amendment because its approval may lead every specialty service broadcaster to begin applying now (not in 2016/17) for 'relief' from their requirement to offer Canadian audiences Canadian programming on Canadian broadcasting services. We do not believe this is what the CRTC intended when it issued Broadcasting Regulatory Policy CRTC 2015-86.

FRPC has appreciated the opportunity provided by the CRTC to comment on Corus' application. We oppose its request to remove 90 hours/year of original, first-run Canadian content, and look forward to the opportunity of reviewing other comments submitted in this proceeding, as well as Corus' reply. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,



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