August 4, 2011 **Filed Electronically**

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

Dear Mr. Morin:

**Re: Broadcasting Notice of Consultation CRTC 2011-408**
**Application No. 2011-0797-0**
**Glassbox Television Inc.**

1. The Canadian Media Production Association (the CMPA)[1] welcomes the opportunity to comment regarding the above-referenced application in which Glassbox Television Inc. (Glassbox) seeks authority to effect a change to its effective control.

2. The CMPA **supports** the application and the applicant's proposed tangible benefits package *subject to the following*:

    a. The applicant is also required to pay $1 million in tangible benefits in respect of the service travel + escape;
    b. A predominant portion of that $1 million is allocated to independent production; and
    c. The applicant is required to commence paying the applicable benefits once the Commission has approved the application.

3. Each of these matters is addressed below.

**Benefits are payable in respect of travel + escape**

4. The CMPA disagrees with Glassbox's argument that benefits should not be payable in respect of travel + escape because benefits had already been required as a result of a

[1] The CMPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. The CMPA's 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

previous transaction. This argument is similar to what BCE Inc. (BCE) unsuccessfully attempted to argue in respect of its recent application to purchase CTVglobemedia.[2] Notably, BCE ultimately dropped that argument and benefits were payable in respect of all the CTV licensed broadcasting services it purchased.[3]

5. As was the case with the BCE transaction, application of the Commission's Tangible Benefits Policy in respect of the Glassbox transaction is required in these circumstances to demonstrate that *this* particular transaction is in the public interest. The Commission reviews each transaction and related application on their own merits. The current transaction in which Blue Ant Media Inc. (Blue Ant) will take over control of travel + escape from Glassbox, and the associated application, are entirely new and different from the transaction and application that resulted in Glassbox previously acquiring control of the service from CTV. The fact that the parties chose to initiate their respective transactions in close proximity to each other is irrelevant: the application of CRTC policy should not be dependent on *when* parties choose to make their business decisions. Otherwise, parties could be motivated to time such decisions so as to avoid their associated regulatory obligations.

6. Also, to our knowledge, the fact that benefits required as a result of a previous transaction remain outstanding has never diminished the obligation of a new purchaser to pay benefits as a result of its transaction.[4]

7. Finally, the CMPA submits that, contrary to the applicant's argument, the Commission's decision to exempt Vision TV from paying benefits when it purchased the Joy TV stations from Rogers in 2008[5] has no bearing on the present case. In that earlier case, the Commission had required the vendor to divest of the stations in question. In the present case, however, Glassbox is transferring control of travel + escape to Blue Ant on its own volition and for its own business reasons. Also, in that earlier case, the Commission acknowledged the poor financial performance of the TV stations in question and also determined that an exemption for the small religious over-the-air broadcaster would be consistent with its existing policy respecting small market over-the-air TV stations. In the present case, the applicant has acknowledged that travel + escape is profitable; moreover, travel + escape is a Category A specialty service and thus an exemption based on a policy established specifically for small over-the-air TV stations would be inappropriate in these circumstances.

8. The CMPA appreciates that the applicant has offered to contribute $1 million in tangible benefits in respect of travel + escape, should the Commission require it.

[2] Broadcasting Notice of Consultation CRTC 2010-926.
[3] Broadcasting Decision CRTC 2011-163.
[4] See the applicant's argument in this respect at paragraph 50 of its Supplementary Brief.
[5] See the applicant's argument in this respect at paragraphs 51 - 57 of its Supplementary Brief.

9. The CMPA submits that, consistent with the Tangible Benefits Policy, the Commission should indeed require payment of such benefits, which would represent the standard 10% of the allocated purchase price for the service.

**A predominant portion of the travel + escape benefits should be allocated to independent production**

10. Throughout the years, the CRTC's application of its Tangible Benefits Policy has contributed enormously to the production of new, high quality and entertaining Canadian programming. Moreover, by requiring that on-screen benefits expenditures flow predominantly to independently-produced programs, the policy has played a critical role in fostering a diversity of programming voices in the Canadian broadcasting system and expanding the breadth and depth of creative ideas now presented on Canadian television and computer screens.

11. The CMPA appreciates that Glassbox proposes to direct all of the benefits payable as a result of this transaction to on-screen initiatives. However, Glassbox proposes to allocate only 50% of the $1 million in benefits payable in respect of travel + escape to independently-produced programs. The CMPA submits that, consistent with the CRTC's Tangible Benefits Policy, the applicant should be required to allocate a predominant portion of that $1 million - i.e. substantially more than 50% - to independently-produced programs.

**The applicant should be required to commence paying the applicable benefits once the Commission has approved the application**

12. Glassbox is seeking to have the Commission defer the measurement of incrementality and the obligation to begin the payment of the tangible benefits flowing from this transaction until commencement of the next licence terms for BITE and travel + escape, which Glassbox had contemplated would occur 1 September 2012. In support of this proposal, Glassbox noted that, by that time, the Commission will have published its decisions with respect to group-based licensing and Glassbox will have submitted its own licence renewal applications.

13. The Commission has now issued its group-based licence renewal decisions, which Glassbox may now address in its response to interventions, should it wish. Accordingly, the timing of those decisions provides no basis for delaying the payment of benefits.

14. Moreover, as a result of administrative licence renewals for both BITE and travel + escape announced in Broadcasting Decision CRTC 2011-417 (subsequent to Glassbox filing its application), their respective next licence terms will now not commence until 1 September 2013.

15. The CMPA submits it would be inappropriate and create too much regulatory uncertainty for the payment of benefits to be deferred for *two* years. Accordingly, the CMPA submits that the applicant's requested delay in the payment of benefits should be denied and payment should commence with the Commission's approval of this transaction.

16. All of which is respectfully submitted.

Sincerely,

[*original signed by*]

Norm Bolen
President & CEO

cc gbuck@mccarthy.ca

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