CMPA Canadian Media Production Association Screen-based entrepreneurs
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February 11, 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 2010-926 – Application by BCE Inc. (BCE), on behalf of CTVglobemedia Inc. (CTVgm) and its licensed broadcasting subsidiaries, for authority to change the effective control of CTVgm's broadcasting entities to BCE (Application No. 2010-1506-6)

1. Pursuant to the revised procedures set out in Broadcasting Notice of Consultation CRTC 2010-926-4, the Canadian Media Production Association (CMPA) provides the following reply comments in response to BCE's revised tangible benefits proposal as filed 7 February 2011.

2. With its most recent benefits proposal, BCE maintains the strategy it has adopted in this process of taking incremental steps towards fully meeting the Commission's tangible benefits policy when pressured further to do so.[1] While the CMPA appreciates that, with this latest strategic step, BCE continues to increase funding to on-screen programming initiatives relative to its own capital costs of doing business, its latest revised offer still fails to satisfy the long-standing requirements of the Commission's benefits policy.

3. Specifically, BCE continues to seek authority to direct a substantial amount of benefits funding - $60 million - to build Bell TV's satellite capacity, notwithstanding that other distributors have repeatedly confirmed that such an undertaking is a cost of doing business and one which would give Bell TV a clear and unfair competitive advantage in the marketplace. For these reasons, the CMPA continues to object to this proposal on the grounds it is contrary to the Commission's tangible benefits policy and the public

[1] BCE's original application: no benefits. Subsequent amended benefits proposals submitted 10 October 2010; then 3 December 2010; then 1 February 2011; then 4 February 2011; then 7 February 2011.

interest. The CMPA submits instead that the funds BCE has earmarked for this capital project should be re-directed so as to ensure the benefits package flowing from this transaction meets the long-standing requirement in the benefits policy that 85% of TV benefits are to be allocated to on-screen programming initiatives.[2]

Building DTH Capacity is Ineligible as it is a Cost of Doing Business

4. Even before BCE tabled its proposed benefits package in this proceeding, other distributors stated on the record that upgrading to MPEG-4 is a cost of doing business for DTH providers, not just in Canada, but around the world. As referenced in the CMPA's 11 January 2011 written submission, FreeHD stated at the DTH Policy hearing[3] that "the wholesale migration to MPEG-4 should be a business imperative for all DTH operators or they will not have sufficient capacity to migrate their services to HD and remain competitive"[4], while Rogers, in the same proceeding, wrote that "[i]t is clear that DTH operators will have to migrate to MPEG 4 to meet all their future capacity demands…and to ensure they can offer programming services in HD."[5]

5. For these reasons, the CMPA is not persuaded by BCE's argument that it would not otherwise invest in additional capacity without benefits money. Such capital costs of doing business do not qualify as benefits under the tangible benefits policy.

6. Moreover, the CMPA cannot help but question how BCE could initially claim it would never undertake the MPEG-4 upgrade without $84 million in benefits, yet now be willing to "accept" $24 million less for the same purpose. Although there is no information on the public record[6] that would confirm BCE's claim that the cost to increase its DTH capacity is now $60 million, the CMPA notes that, in the course of last fall's DTH Policy hearing, and as referenced in this proceeding by Commissioner Poirier[7], FreeHD Canada provided information that supported an estimated cost of $21 million for BCE to undertake a MPEG-4 upgrade.

7. In any event, BCE appears to have other alternatives available in order to add capacity, as FreeHD identified at the DTH Policy hearing.[8] For example, FreeHD suggested that a MPEG-2 DVC upgrade would allow Bell TV to add as many as 192 standard definition (SD) services if deployed across all of Bell's transponders. When questioned by Commissioner

[2] In Appendix A, the CMPA provides examples of decisions in which the Commission has consistently maintained this 85% requirement, as requested by Commissioner Poirier during the CMPA's appearance at the hearing.
[3] Pursuant to Broadcasting Notice of Consultation CRTC 2010-488, http://www.crtc.gc.ca/eng/archive/2010/2010-488.htm (BNOC 2010-488).
[4] The CMPA's intervention dated 11 January 2011, at par. 39.
[5] *Ibid*., at par. 41.
[6] All cost information regarding the DTH capacity proposal was filed in confidence in BCE's responses to undertakings.
[7] Transcript, vol.1, lines 1067-1075.
[8] BNOC 2010-488, Transcript, vol. 3, lines 2410 - 2412.

Poirier at the DTH Policy hearing, Bell admitted it would be able to add 90 new standard definition services by the summer of 2011 with this upgrade.[9]

Public Benefits Should Not Subsidize One Company's Competitive Advantages

8. As BCE admitted[10], the benefits funding it seeks to invest in boosting Bell TV's satellite capacity will allow it to distribute more services than even the expanded selection of OTA stations it identified in its oral reply.[11] In fact, the CMPA understands that, by swapping out its MPEG-2 set-top boxes (STBs) for MPEG-4 STBs, Bell TV would *double* the number of HD services that it could offer. Since Bell TV currently offers over 100 HD services, this means it would be able to offer another 100 new HD services using the incremental MPEG-4 capacity. The corresponding figure for SD services is approximately 400 additional services. This means that approval of BCE's DTH capacity request would serve to fund Bell TV's carriage of some 360 more SD services beyond the 40 or so LPIF-eligible and other OTA stations it has now offered to add. Put another way, BCE would use only 10% of the upgraded MPEG-4 capacity it would generate from benefits funding to meet the new carriage commitments it has made in this proceeding.[12]

9. This ancillary capacity would represent a significant competitive advantage for BCE over the other DTH providers, made all the more so because BCE would subsidize its capacity build with public benefits funds not available to its competitors.

10. In this respect, the CMPA notes that Shaw, Quebecor, Cogeco and the CCSA have each strongly objected to BCE's proposal to use tangible benefits monies to fund Bell TV's DTH capacity. Shaw argued that BCE would enjoy an immediate competitive advantage over Shaw Direct by virtue of being in every local market where Shaw is unable to carry the local signal due to capacity constraints; funding its consumer equipment upgrades through benefits versus normal capital expenditures; and the overage of capacity that could be used to deliver more HD services to its customers.[13]

11. Quebecor objected on the grounds that Bell is a competitor to Vidéotron in the distribution market, and that Quebecor continues to invest millions of dollars in the normal course of its operations in order to incorporate new technologies.[14]

12. Cogeco objected on the grounds the initiative was a cost of doing business[15] and that the additional satellite capacity conferred on BCE would be used to the detriment of other

[9] *Ibid*., lines 3271 - 3276.
[10] Transcript, vol. 4, line 3907.
[11] *Ibid*., line 3909.
[12] 40 OTA stations/400 = 10%.
[13] Shaw Communications' intervention dated 11 January 2011, at par. 7.
[14] Transcript, vol. 3, lines 2917 - 2919.
[15] Cogeco's intervention dated 11 January 2011, at par. 71.

satellite distributors and the potential detriment of other terrestrial distributors.[16] Finally, the CCSA objected to using the tangible benefits package to help BCE subsidize the delivery of satellite receivers and dishes to Canadian OTA viewers.[17]

Not in the Public Interest

13. The CMPA recognizes that DTH distribution of Canadian broadcasting services is a public policy objective. Indeed, one purpose of the Commission's DTH Policy proceeding last fall was to review its policies for DTH satellite distribution particularly with respect to "the conventional television stations that DTH distributors are required to offer to their subscribers."[18] In the course of the DTH Policy hearing, the Commission identified its goal that all LPIF-eligible conventional television stations are ultimately made available via satellite. It is expected therefore that the Commission will address the DTH carriage of LPIF-eligible stations by all DTH providers when it issues its policy determinations flowing from that process.
14. The CMPA submits that it would not be good public policy and potentially administratively unfair for the Commission to make a determination favouring the single applicant in this current quasi-judicial proceeding when the very issue at hand - the DTH carriage of LPIF-eligible stations - was at the centre of a targeted policy proceeding undertaken separately and involving not only other parties[19] but other decision-makers[20], and where the rulings from that earlier policy proceeding had not been issued in advance of this adjudicative one.
15. The CMPA also submits that a desire to achieve one newly-defined policy goal - DTH carriage of LPIF-eligible stations - should not justify abandoning or undermining the long-standing tangible benefits policy whose primary purpose, as designed and consistently implemented, is to achieve another important but different public policy goal, namely support for the production of Canadian programming.
16. If, notwithstanding the above arguments, the Commission still wishes to permit BCE to use benefits funds to subsidize its DTH capacity, the CMPA submits that such funding should only be sourced from the 15% of the TV benefits which will remain after, consistent with the tangible benefits policy, 85% of those benefits have been allocated to on-screen programming initiatives. Assuming, for this purpose, that total TV benefits amount to $217.1 million, 15% represents $32.6 million. The CMPA notes that this figure

[16] Transcript, vol. 3, line 2140.
[17] CCSA's intervention dated 11 January 2011, at par. 26.
[18] *Ibid*., above note 3.
[19] For example, the CMPA notes that, although Shaw submitted a written intervention in this proceeding, it did not appear, while FreeHD did not intervene.
[20] The Commission panel for the BCE-CTVgm adjudicative process will make its decision based on the "those who hear, decide" principle, while the policy determinations flowing from the DTH policy hearing may be made by the full Commission (*Broadcasting Act*, s. 20).

is roughly twice the amount, in both dollar and percentage terms, granted to Shaw in Broadcasting Decision CRTC 2010-782 to pursue a similar public policy objective.[21]

The Value of this Transaction

17. Lastly, the CMPA notes that, in submitting its 7 February 2011 revised benefits package, BCE has adopted the $217.1 million figure for the value of the TV benefits set out in the valuation document the Commission distributed at the hearing.[22] As identified in the Commission's questioning of BCE, however, attributing value to the synergies to be realized as a result of this transaction would raise its overall value, while a re-distribution of the relative values of the radio and TV assets could serve to increase the amount of the TV-related benefits. In addition, the CMPA reiterates that inclusion of the new media broadcasting activities in the value of the transaction should also serve to increase its overall value.[23] Once these matters are properly factored in, the valuation of the transaction should be greater than what BCE reflected in its revised proposal. Accordingly, the value of the TV benefits should also be greater than $217.1 million.

Yours truly,

[*original signed by Norm Bolen*]

Norm Bolen
President & CEO

Attach.

cc: Mirko Bibic, mirko.bibic@bell.ca

[21] At $15 million, Shaw's "local television satellite solution" represented 8.3% of the Shaw benefits package.
[22] Exhibit #1.
[23] As raised in the Joint Report which the CMPA and the guilds filed as part of this process.

APPENDIX A: CMPA Response to Undertaking from Commissioner Poirier
Transcript Volume 2 Line 1969

The Commission has consistently maintained that roughly 85% of benefits are to flow to "on-screen" programming.

For example, in the Quebecor purchase of TVA, the Commission required the applicant, as a condition of license, to implement a tangible benefits package that allocated 90% of the package to on-screen programming (80% of which was dedicated to priority programming) and 10% to other social benefits. In the CTVgm purchase of CHUM, the Commission determined that the model used to apportion 85% of the television benefits to incremental programming initiatives and 15% to social benefits was "appropriate and consistent with past practice."

In the transaction involving Canwest's purchase of Alliance Atlantis, the Commission approved Canwest's tangible benefits package with 90% to being directed to incremental programming initiatives and 10% to social benefits, noting that this approach was "appropriate and consistent with past practice." In the transaction involving CHUM's purchase of Craig, the Commission approved a split of 88% to priority programming and 12% to other social benefits.

Recently, in the ZoomerMedia acquisition of Vision TV, the Commission required the applicant to re-cast its benefits package on the basis that its proposed 70%/30% allocation was "inconsistent with the Commission's general approach requiring that the majority (approximately 85%) of benefits should result in on-screen programming."

In the most recent Shaw-Canwest decision, the Commission approved the allocation of 79% of the benefits to on-screen programming, stating that "the proportion of the tangible benefits allocated to programming-related initiatives is consistent with the Commission's standard approach and precedents, and reflects the evolving multiplatform environment in which broadcasters operate."

Percentage of On-Screen Benefits versus Social Benefits in Recent Television Ownership Transactions			
	On-screen benefits (%)	**Social Benefits (%)**	**Decision reference**
QMI-TVA	90%	10%	Broadcasting Decision CRTC 2001-384
CHUM-Craig	88%	12%	Broadcasting Decision CRTC 2004-502
CTV-CHUM	85%	15%	Broadcasting Decision CRTC 2007-165
ZoomerMedia-VisionTV	85%	15%	Broadcasting Decision CRTC 2010-193
Canwest-Alliance Atlantis	90%	10%	Broadcasting Decision CRTC 2007-429
Shaw-Canwest	79%	21%	Broadcasting Decision CRTC 2010-782