CMPA
Canadian Media Production Association
Screen-based entrepreneurs
ottawa | toronto | vancouver

April 5, 2013

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2013-106: Application by Astral Media Inc. (Astral) for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc. (BCE)
Application 2013-0244-7

1. These are the comments of the Canadian Media Production Association ("the CMPA")[1] regarding the above-noted application. We wish to appear at the 6 May 2013 public hearing to further address the arguments made in this submission.

2. The CMPA submits that the amount of benefits BCE proposes to allocate to support English-language feature films is inconsistent with the circumstances and challenges facing the Canadian feature film industry, and is entirely at odds with the relative size and Canadian programming contributions – and even the value – of the movie-based TV services BCE is acquiring. Contrary to the CRTC's tangible benefits policy, BCE's proposal fails to deliver a fair or proportionate share of TV On-Screen benefits to the communities served by the undertakings to be transferred.

3. Accordingly, the CMPA **supports** this application ***subject*** to BCE amending its tangible benefits proposal so as to provide a more substantial and meaningful contribution to the future of Canadian English-language feature films. Specifically, we submit that BCE should allocate **$24.25 million - $32 million** in benefits to English-language film support.

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[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 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.

EXECUTIVE SUMMARY

Introduction

4. The CMPA **supports** this application ***subject*** to BCE amending its tangible benefits proposal so as to provide a more substantial and meaningful contribution to the future of Canadian English-language feature films commensurate with the relative size and Canadian programming contributions of the English-language movie-based services it is acquiring. Specifically, we submit that BCE should allocate **$24.25 million - $32 million** in benefits to English-language film support.

5. The CMPA appreciates that, in this application, BCE is now proposing a TV benefits package that represents 10% of the value of the television assets in the transaction and that allocates 85% of those benefits to incremental and qualifying independently-produced on-screen programming initiatives. We also appreciate that BCE has agreed that the Astral services should be subject to a Terms of Trade condition of licence.

6. Nevertheless, the CMPA is very concerned about the impact of BCE's divestiture plans and benefits proposal.

7. The CMPA fears that BCE's divestiture plans could lead to even greater ownership concentration in the children's/youth and animation markets, thereby harming the market for independently-produced programs in those genres and lessening programming diversity.

8. While BCE seeks to retain the two English-language pay TV movie services, TMN and TMN Encore and the movie-based PPV service, Viewers Choice Canada, its currently-proposed benefits package offers little by way of incremental funding for the Canadian English-language feature films those services must broadcast.

The Proper Valuation of the "Included" Assets

9. At the outset we wish to express our concern that BCE's revaluation of this transaction improperly reduces by some $16 million the benefits that could flow to supporting Canadian feature films and, particularly, could rectify the deficiency in BCE's English-language film support proposal (without impacting on other benefits allocations).

A Unique Opportunity to Support Canadian Feature Films

10. The CMPA submits that, in assessing the benefits associated with this current transaction, the Commission should focus first on maximizing support for Canadian programming for the pay TV/PPV movie services – and particularly support for Canadian feature films, which should be at the heart of those services.

11. BCE has proposed to allocate $28.8 million to support Canadian feature films. To maximize this support, however, the Commission should add to this amount the additional $16 million in benefits payable as a result of the proper valuation of the "excluded" assets, bringing the total amount for feature films to **$44.8 million**.

Allocating the TV On-Screen Benefits

12. We submit that, while the Commission has generally based the total benefits payable on a third-party valuation of the assets in a transaction, the unique nature of the pay TV market requires a more granular approach to the allocation of On-Screen benefits in order for those benefits to flow fairly to the communities served. To that end, the CMPA submits that, when allocating the On-Screen benefits, the Commission must take into account the unique nature of the movie-based services involved; their relative size; and the relative contributions they make to Canadian programming.

13. Specifically, we submit the Commission should allocate the benefits for English- and French-language feature film support based on the relative size and Canadian programming contributions of the movie-based pay TV/PPV services in this transaction.

More Support for English-language Feature Films

14. BCE's proposal to allocate feature film support by a ratio of 71:29 in favour of Astral's two French-language pay TV movie services is at direct odds with the relative size of the movie services and the contributions they make to Canadian programming:

- In terms of **revenues**, the three English-language services outweigh the French-language services by a ratio of 72:28: based on a total of $44.8 million in film support, this ratio justifies at least **$32 million** for English-language film support;

- In terms of Canadian programming contributions, the ratio of CPE is 69:31 in favour of the English-language movie services, justifying almost **$31 million** for English-language films;

- In terms of **subscribers**, or communities served, the ratio is 65:35 in favour of the English-language movie services, justifying over **$29 million** for English-language film support.

15. All of these allocation ratios have the benefit of being derived from objective and publicly-available numbers. In addition, an allocation ratio based on relative CPE contributions aligns most closely with the Commission's mandate and the fundamental purpose of On-Screen benefits, namely to support and promote the creation and presentation of Canadian programming.

16. Even if the Commission were to allocate the benefits for feature films using BCE's valuation methodology, the ratio of the values it has attributed to Astral's English-language versus French-language movie-based services is 62:38, supporting a similar allocation of the feature film benefits in favour of English-language films. Thus, even based on BCE's methodology, almost **$28 million** should be allocated to English-language film support.

17. In terms of market realities and programming needs, the CMPA has repeatedly highlighted that the Canadian English-language feature film industry is facing a funding crisis because English-language broadcasters in general no longer support Canadian feature films as they once did. We wish to underscore the widely-accepted truth that this funding crisis is with respect to English-language films, not French-language films.

18. For all these reasons, the CMPA submits that, of the total of $44.8 million in TV On-Screen benefits that BCE should now direct to supporting Canadian feature films in light of the pay TV/PPV movie services it is acquiring, **$28 million - $32 million** should be allocated to English-language film support.

19. Alternatively, we submit that the entire $16 million increase in TV On-Screen benefits resulting from inclusion of the $312 million improperly added to the value of the "excluded" assets should be allocated to support English-language feature films. This would bring the total for English-language feature films up to **$24.25 million**, while preserving the amount of funding BCE proposes for French-language film support.

20. We propose to leave the amounts allocated to English-language and French-language "Other PNI" unchanged from BCE's proposal, at $24.56 million and $43.65 million, respectively. This is an acknowledgement of the fact that, while the pay TV services are primarily movie-based, they also offer other PNI, including "edgy" drama and comedy series, and should be encouraged to continue doing so. It also reflects the fact that BCE is acquiring other French-language services which will offer PNI.

Feature Film Contributions Should be through the Harold Greenberg Fund

21. We submit that it is inappropriate for contributions to a government agency such as Telefilm to qualify as benefits under the Commission's tangible benefits policy. Instead, all of the benefits allocated to support Canadian English-language feature films should be directed to the HGF.

Ensuring Incrementality

22. To be truly incremental, BCE's annual contribution to the HGF must be large enough to make a real difference in the creation and production of new English-language feature

films and therefore must substantially exceed the $1.3 million Astral historically directed each year to the HGF.

The Benefits Payment Schedule

23. Since the Commission's general approach is now to license broadcasters for no more than 5 years, the benefits flowing from this transaction should be paid out in roughly equal installments over 5 years, not 7 years as BCE has proposed.

24. Also, the payout period for English-language "Other PNI" benefits should be 5 years, commencing in the first year as with other benefits. BCE should not be permitted to push out the beginning of those payments to 2017 as it proposes: given the recent Canadian programming successes, now is not the time to slow the momentum down.

Spending Benefits on the Services Purchased

25. The CMPA opposes BCE's plan to allocate the English-language "Other PNI" benefits wherever it deems the expenditures appropriate within its combined CTV-Astral stable of services. BCE must not be allowed to divert those benefits in a manner that could actually serve to erase the nature of the services it is buying.

26. To this end, the CMPA submits that the Commission should require that any program produced or acquired using benefits designated for English-language "Other PNI" be broadcast *first* on TMN, and that the incrementality of the associated expenditures be measured as against TMN's existing obligations.

Regional Offices

27. We call on BCE to supplement its commitment to re-open the Vancouver and Halifax regional offices by also committing to re-open the regional offices that used to exist in Winnipeg and Montreal, and to send senior commissioning personnel to all the various regions on a regular basis to both hear proposals from regional producers and make decisions, as appropriate, regarding those proposals. We also call on the Commission to hold BCE to these commitments so as to ensure that regional production actually does benefit from this transaction in a real and immediate way.

Reporting

28. Given the above-noted need to ensure that the English-language benefits flowing from this transaction accrue first and foremost to TMN, it is critical that the Commission require BCE to provide annual reports which describe in a full and completely transparent manner how it has spent such benefits.

Re-capping the First BCE-Astral Application

29. As we highlighted when the Commission considered the first BCE-Astral application[2], BCE's purchase of Astral is significant for the CMPA's members as it will mean the disappearance of a highly-valued, independent purchaser and broadcaster of English-language feature films and children's and youth programming (including animation).

30. In our intervention in response to that previous application, the CMPA expressed concern with respect to various matters, including the level of ownership BCE would have attained within the Canadian broadcasting system and the impact it would have had on the diversity of broadcasting voices available to Canadians. The CMPA also called on BCE to amend its benefits proposal so that it would be fully consistent with the Commission's tangible benefits policy, and would provide substantially more funding to the Canadian TV programming areas most aligned with the nature of the services being acquired as well as most in need, including English-language feature films.

31. The Commission obviously shared our concerns (and those of others) relating to concentration of ownership and diversity of voices; hence, it denied that earlier application.[3] In doing so, the Commission did not need to address all of our arguments concerning BCE's tangible benefits proposals.

The Current Application

Introduction

32. It would appear that, in this current application, BCE has sought to address the concentration of ownership and diversity of voices concerns that arose with respect to its first application by committing to divest itself of certain of the Astral broadcasting services.

33. As regards the issue of tangible benefits: while, as addressed herein, the CMPA submits that substantially more funds should be allocated to support Canadian English-language feature films, we nevertheless appreciate that, in this application, BCE is now proposing a TV benefits package that is consistent with long-standing CRTC policy in that it represents 10% of the value of the television assets in the transaction and 85% is

[2] Broadcasting Notice of Consultation CRTC 2012-370, http://www.crtc.gc.ca/eng/archive/2012/2012-370.htm.
[3] Broadcasting Decision CRTC 2012-574, http://www.crtc.gc.ca/eng/archive/2012/2012-574.htm.

allocated to incremental and qualifying[4] independently-produced on-screen programming initiatives.

34. We also appreciate that BCE has once again[5] agreed that the Astral English-language services it is acquiring should be subject to a condition of licence ("COL") requiring the licensee, in respect of those services, to adhere to the Terms of Trade Agreement Bell Media has signed with the CMPA. In a broadcasting environment where ownership concentration is decreasing the number of buyers for high quality independently-produced programs and increasing bottlenecks in access, our Terms of Trade Agreement represents the most essential and effective safeguard for advancing the Commission's long-standing policy of supporting independently-produced programming and ensuring the continued presence of independent voices on the broadcast screen.

35. In this current application, BCE now proposes to divest itself of Astral's English-language children's/youth and animation services while retaining Astral's English-language movie services. Despite our appreciation for the steps BCE has taken in this application, as noted above, the CMPA nevertheless remains very concerned about the impact of both these plans.

36. With respect to BCE's divestiture plans, the CMPA fears that they could in fact lead to even greater ownership concentration in the children's/youth and animation markets, thereby harming the market for independently-produced programs in those genres and lessening programming diversity. For example, Corus Entertainment's announced purchase of Teletoon, Teletoon Retro and The Cartoon Network[6] could result in that company controlling 85% of the market for Canadian English-language children's animation programs.[7]

37. That being said, the CMPA recognizes that, in the event this current application is approved, the most appropriate regulatory venues for presenting our concerns about the pending over-concentration in the English-language children's/youth and animation programming markets will be the CRTC processes to consider the applications to purchase the related programming services from BCE. As noted, Corus has already announced its deal with BCE to purchase Astral's animation services; who will purchase the English-language services, Family Channel/Disney Jr. and Disney XD, is as yet unknown. We anticipate that the Commission will announce the proceeding(s) to address those transactions in due course, if and when appropriate. Nevertheless, we

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[4] In this respect, we note that BCE has now properly included its proposed support for film festivals within the 15% it has allocated to "Social Benefits".

[5] CRTC Transcripts, 10 September 2012, Vol. 1, at line 461.

[6] See http://www.newswire.ca/en/story/1123705/corus-entertainment-expands-interests-in-french-language-specialty-television-market-through-major-deals-with-bell-and-shaw-media.

[7] Source: CMRI (BBM): Corus-Astral Share of Viewing to Canadian Animation Programs, 2011-2012 Broadcast Year.

wish to forewarn the Commission that these pending applications could raise serious issues respecting the future of an independent Canadian supply of children's/youth and animation programming in this country.

38. While BCE seeks to retain the two English-language pay TV movie services, The Movie Network ("TMN") and TMN Encore ("Encore"), and the movie-based pay-per-view ("PPV") service, Viewers Choice Canada ("VCC"), its currently-proposed benefits package offers little by way of incremental funding for the Canadian English-language feature films those services must broadcast. As a result, in this current application, BCE once again fails to direct an appropriate level of tangible benefits to the category of Canadian TV programming most aligned with the nature of the services being acquired and the type of programming of national interest ("PNI") most in need of support.

39. In the remainder of this submission, we focus primarily on presenting our arguments as to why BCE should allocate at least **$24.25 million - $32 million** in benefits to the Harold Greenberg Fund ("HGF") to support Canadian English-language feature films.

40. First, however, we wish to express our concern regarding the manner in which BCE has revalued this transaction, which we submit improperly reduces by some $16 million the benefits that could otherwise flow to supporting Canadian feature films and, particularly, could rectify the deficiency in BCE's English-language film support proposal (without impacting on other benefits allocations).

The Proper Valuation of the "Included" Assets

41. Generally, as was the case with our intervention in response to the first BCE-Astral application, the CMPA relies on the Commission's expertise to determine the true value of the assets in an ownership transactions for the purpose of establishing the base upon which the appropriate level of required tangible benefits is calculated. This is primarily because the applicant typically claims confidentiality for the financial information that is critical for establishing value, meaning the Commission becomes the only party with the necessary information to properly assess the applicant's valuation claims.

42. As BCE has, once again, filed critical financial information in confidence, the CMPA again must rely on the Commission's expertise to assess the validity of BCE's valuation claims, including the manner in which it has valued the "included" vs. "excluded" assets, the radio vs. TV assets, and the French-language vs. English-language assets.

43. That being said, we wish to highlight for the Commission that we consider BCE has inappropriately increased the total value of what it has claimed as "excluded" assets, resulting in an undervaluation of the assets triggering its tangible benefits obligations and a corresponding reduction in the benefits that should be payable.

44. Specifically, while the overall value of the transaction remains unchanged in the PricewaterhouseCoopers ("PwC") Revised Valuation Report, that Revised Report[8] has now increased the value attributed to Astral's Out of Home advertising by $354 million[9] and to Astral Media Plus by $6 million.[10] Although the Revised Report has also decreased the value attributed to "Online and other" by $48 million[11], the overall result[12] is that PwC has now increased the total value attributed to the "excluded" assets by $312 million – or almost 40% – from $793 million to $1.105 billion.

45. This means that BCE now effectively argues that the valuation which had previously formed the base for the calculation of tangible benefits should be reduced by $312 million, notwithstanding that there is no evidence to suggest that the value of the retained broadcasting assets has actually declined by that – or any – amount. To point out that BCE's new approach is troubling is perhaps an understatement.

46. We also note that, although the original PwC Valuation Report attributed no value to Astral's French-language Category B specialty service, Investigation – because it had yet to launch "and was put on hold and had no carriage or program agreements in place"[13] – the Revised Report now attributes an (undisclosed) value to the still-unlaunched service on the basis that BCE "plans to launch it post closing."[14] This is in stark contrast to PwC's approach to The Cartoon Network in its original Report, which it excluded from the value of Astral's English-language assets because it is a Category B service which had not yet launched.[15]

47. The effect of these reversals in valuation approaches is to first reduce the total amount of benefits that should be required to go on-screen and then increase the relative level of On-Screen benefits BCE proposes for French-language vs. English-language initiatives, since BCE bases its allocation of benefits on the relative value of the assets in each language. While this may make business sense for BCE – allowing it, for example, to use the savings for other corporate purposes – it is neither appropriate nor fair when it comes to the correct calculation and allocation of benefits.

48. The Commission's long-standing rule is that, for purposes of applying its tangible benefits policy, the value of a transaction is to be determined as of the date of the

[8] PwC Revised Valuation Report, dated 28 January 2013, at p. 13 of 125, par. 16, Table 2.
[9] From $477M in the original PwC Report to $831M in the Revised Report, *ibid*.
[10] From $94M to $100M, *ibid*.
[11] From $221M to $173M, *ibid*.
[12] The value of "Publishing" remains unchanged at $1M, *ibid*.
[13] *Ibid*, at p. 54 of 125, par. 3.
[14] *Ibid*.
[15] *Ibid*, at par. 4.

transaction.[16] The original PwC Valuation Report purported to do just that.[17] BCE's attempt now to revise upward the value of the "excluded" assets so as to reduce the amount of benefits payable is therefore contrary to the Commission's policy and should be disallowed; same with the new inclusion of the French-language service, Investigation. BCE should not be permitted to take advantage of the passage of time resulting from the Commission's denial of its first application to revisit its original value determinations in order to retroactively assign more favourable numbers to assets it still plans to buy.

49. If the Commission does not challenge this re-valuation, a very perverse result will ensue. By now overvaluing the excluded assets but keeping the overall transaction price the same, BCE is effectively suggesting that the value of the broadcast assets has somehow declined even though there is no evidence to suggest this is the case. In fact, we suspect that, if the TMN/Encore properties were actually auctioned off, their value would be even higher than now stated.

50. Using BCE's methodology for determining the total amount of On-Screen benefits payable, that total should increase by almost $16 million as a result of the $312 million increase in the value of the "included" assets.[18] We leave it to the Commission to determine the impact of removing Investigation from the valuation of the French-language assets.

51. As addressed further below, we submit this additional $16 million in On-Screen benefits should be allocated to support Canadian feature films.

A Unique Opportunity to Support Canadian Feature Films

52. The most important English-language broadcasting undertakings which BCE is acquiring in this transaction are the two movie-based pay TV services, TMN and Encore. It is also acquiring the English-language movie based PPV service, VCC.[19] On the French-language side, BCE is acquiring two movie-based pay TV services, Super Écran and Cinépop.[20]

[16] Broadcasting Public Notice CRTC 2008-57, *Information bulletin - Allocation of the transaction value in changes in the effective control of broadcasting undertakings*, http://www.crtc.gc.ca/eng/archive/2008/pb2008-57.htm, at par. 13.

[17] Moreover, there is no suggestion in the Revised PwC Report that the date of the transaction has now somehow changed: for example, in Schedule 11, the description of the Transaction refers back to the original 16 March 2012 Arrangement Agreement.

[18] Using BCE's approach, 60% of the $312M would be assigned to the value of the regulated TV assets, equaling $187.2M, 10% of which is $18.72M; then 85% of $18.72 = $15.9M for On-Screen initiatives.

[19] BCE is also acquiring two very small local television stations serving communities in BC.

[20] While it is true that the other Astral French-language services that BCE is acquiring in this transaction may also broadcast the occasional movie, theatrical feature films play only a minor role in their overall programming.

53. The fact that this application involves the transfer of ownership of two English-language and two French-language movie-based pay TV services makes it unprecedented in the Commission's history of reviewing ownership transactions. It has been twenty-four years since the Commission issued its seminal notice regarding its tangible benefits policy, Public Notice CRTC 1989-109, *Elements Assessed by the Commission in Considering Applications for the Transfer of Ownership or Control of Broadcasting Undertakings*.[21] In the intervening years, the Commission has applied its benefits policy in respect of numerous transfer of ownership applications involving conventional television and radio stations and specialty services; over the same period, however, it has only considered <u>one</u> such application involving pay TV movie services – and that was thirteen years ago, when it approved the application by Corus to purchase WIC Premium Corporation, owner at the time of the then-SuperChannel and MovieMax English-language pay TV movie services.[22]

54. While, no doubt, the Commission will receive more ownership transfer applications from both language markets in the future, history would strongly suggest that they are unlikely to involve pay TV movie services. Accordingly, this current regulatory proceeding constitutes a rare opportunity for the Commission to establish benefits obligations which are both appropriate for pay TV movie services and reflective of the relative size, contributions and programming requirements of such services in their respective official language markets. To that end, it constitutes a unique and important opportunity to generate new and substantial funding to support the production of the Canadian feature films to be broadcast on those movie services, reflective of the feature film needs and circumstances of each language market. Although, as noted above, feature films are considered to be PNI, they have to date been substantially underfunded relative to other PNI genres.

55. For these reasons, the CMPA submits that, in assessing the benefits associated with this current transaction, the Commission should focus first on maximizing support for Canadian programming for the pay TV/PPV movie services – and particularly support for Canadian feature films, which should be at the heart of those services.

56. BCE has proposed to allocate $28.8 million in benefits to support Canadian feature films. In order to maximize this support, however, we submit that the Commission should add to this amount the additional $16 million in On-Screen benefits payable as a result of the proper valuation of the "excluded" assets, as addressed above. That would bring the total amount for feature film support to **$44.8 million**.

[21] http://www.crtc.gc.ca/eng/archive/1989/PB89-109.HTM.
[22] Decision CRTC 2000-222, http://www.crtc.gc.ca/eng/archive/2000/DB2000-222.htm.

Allocating the TV On-Screen Benefits

57. In considering this application, the Commission will be required for the first time to determine the proper allocation of On-Screen benefits as between English- and French-language programming initiatives, including the associated allocation of benefits to support feature films.

58. We submit that, while the Commission has generally based the total amount of benefits payable on a third-party valuation of the regulated vs. unregulated assets in a transaction, and similarly used relative valuations to allocate between radio and TV benefits where necessary, the unique nature of the pay TV market requires a more granular approach to the allocation of On-Screen benefits in order for those benefits to flow fairly to the communities served.

59. To that end, the CMPA submits that, when allocating the BCE-Astral On-Screen benefits, the Commission must take into account the unique nature of the movie-based pay TV and PPV services involved; the relative size of those services and the communities they serve; and the relative contributions they make to Canadian programming.

60. Specifically, we submit the Commission should allocate the benefits for English- and French-language feature film support based on the relative size and Canadian programming contributions of the movie-based pay TV/PPV services in this transaction.

More Support for English-language Feature Films

61. Of the $28.8 million BCE currently proposes to allocate to support Canadian feature films, it proposes to direct only $8.25 million to support English-language feature films[23] while proposing to direct almost *2 1/2 times* that amount – or $20.55 million [24] – for French-language film support.[25] BCE's support for Canadian English-language feature films represents less than 29% of the total funds it has proposed for Canadian film support[26], and less than 8% of its overall TV On-Screen benefits package.[27]

62. Even using as the base the $44.8 million figure we submit should be the amount of benefits funding allocated to feature film support, BCE's proposed approach would generate only $13 million for English-language feature films, versus almost $32 million for French-language films.[28]

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[23] $5M to the Harold Greenberg Fund and $3.25M to the Telefilm Private Development Fund.
[24] 20.55/8.25 = 2.49.
[25] $18.8M to the Harold Greenberg Fund and $1.75M to the Telefilm Private Development Fund.
[26] 8.25/28.8 = 28.6%.
[27] 8.25/105.91 = 7.8%.
[28] Based on BCE's English-language:French-language film support ratio of 29:71.

63. The CMPA submits that the amount BCE proposes to allocate to support English-language feature films is wholly inadequate given the size and nature of this transaction, and entirely ignores "the responsibilities to be assumed, the characteristics and viability of the broadcasting undertakings in question."[29]

64. While a recently-published public opinion survey commissioned by the Department of Canadian Heritage demonstrates that Canadians want access to Canadian films on television[30], BCE's benefits proposal represents nothing more than a token nod to Canadian English-language feature film audiences. As was the case with BCE's proposal for English-language films in its first Astral application, this current proposal will do little if anything meaningful to "yield measurable improvements to the communities served by the broadcasting undertaking being transferred"[31] or result in "programming [that] is new or enhances that offered by the existing licensee."[32] Rather, it again underscores the retreat of both private and public English-language broadcasters from any meaningful support for Canadian feature films.

65. It is this ongoing erosion of broadcaster support for Canadian films on television which led the CMPA to intervene in a separate proceeding[33] in support of the application by Starlight: The Canadian Movie Channel. In that intervention, we argued that, while Starlight won't in itself solve the current English-language feature film crisis – and should in no way lessen the role which the CRTC should require Canadian VOD providers, pay TV operators and other broadcasters to play to support Canadian feature films – it will make an important and valuable contribution to the future of Canadian feature films and to the Canadian broadcasting system by establishing a new funding source and by giving Canadians a new opportunity to view Canadian-made films which tell their stories and reflect their values and their outlook on the world.[34]

66. BCE's proposal to allocate feature film support by a ratio of 71:29 in favour of Astral's two French-language pay TV movie services is at direct odds with the relative size of the movie services BCE is acquiring and the contributions they make to Canadian programming:

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[29] *Ibid*, above note 21.
[30] *Canadians' Attitudes and Opinions Towards Canadian Feature Films*, Department of Canadian Heritage, 29 October 2012, http://www.pch.gc.ca/pgm/flm-vid/publctn-eng.cfm.
[31] *Ibid*, above note 21.
[32] See par. a) of the Appendix to Public Notice CRTC 1993-68, *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, http://www.crtc.gc.ca/eng/archive/1993/PB93-68.HTM.
[33] Broadcasting Notice of Consultation CRTC 2013-19, http://www.crtc.gc.ca/eng/archive/2013/2013-19.htm.
[34] See the CMPA's intervention available at: http://www.cmpa.ca/sites/default/files/documents/gr-and-regulatory/crtc/2013-02-26-BNOC-2013-19_Independent-Specialties-Renewals.pdf.

- In terms of **revenues**, the three English-language services outweigh the French-language services by a ratio of 72:28[35], almost the exact opposite of the ratio reflected in BCE's proposal: based on a total of $44.8 million in film support, this ratio justifies at least **$32 million** for English-language film support;[36]

- In terms of Canadian programming contributions, the ratio of Canadian programming expenditures ("CPE") is 69:31 in favour of the English-language movie services[37]: on a $44.8 million base, this ratio justifies almost **$31 million** for English-language films;[38]

- In terms of **subscribers**, or communities served, the ratio is 65:35 in favour of the English-language movie services[39]: this ratio justifies over **$29 million** of the $44.8 million for English-language film support;[40]

67. All of these allocation ratios – based on relative revenues, CPE contributions and subscribers – have the benefit of being derived from objective and publicly-available numbers.

68. In addition, an allocation ratio based on relative CPE contributions aligns most closely with the Commission's mandate and the fundamental purpose of On-Screen benefits, namely to support and promote the creation and presentation of Canadian programming**.**

69. Even if the Commission were to allocate the benefits for feature films using BCE's valuation methodology, the ratio of the values it has attributed to Astral's English-language versus French-language movie-based services is 62:38[41], supporting a similar allocation of the feature film benefits in favour of English-language films. Thus, even based on BCE's methodology, almost **$28 million** should be allocated to English-language film support.[42]

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[35] Based on 2011 revenues: TMN ($139M) + TMN Encore ($26M) + VCC ($17M) = $182M; Super Écran ($65M) + Cinépop ($7M) = $72M. Total = $254M. 182/254 = 72%; 72/254 = 28%. Source: CRTC Financial Summaries.

[36] 72% of $44.8M= $32.3M.

[37] Over the 5-year period from 2006-2011, Astral's English-language movie services contributed a total of $147 million in CPE ($140.4M by TMN/Encore; $6.7M by VCC) whereas its French-language services contributed $65.8M. Source: Nordicity.

[38] 69% of $44.8M = $30.9M.

[39] TMN subs (1.2M) + Encore subs (1.6M) = 2.8M (no subscriber count for VCC). Super Écran subs (600K) + Cinépop subs (900K) = 1.5M. Total = 4.3M. 2.8/4.3 = 65%; 1.5/4.3 = 35%. Source: PwC Revised Valuation Report, at pp 55-57 of 125.

[40] 65% of $44.8M = $29.1M.

[41] The Revised PwC Report attributes a value of $377M to the English-language pay TV/PPV assets ($369M for TMN/Encore, $8M for VCC) and $233M to the French-language pay TV assets. Total value for the pay TV assets is $610M: 377/610 = 62%; 233/610 = 38%.

[42] 62% of $44.8M = $27.8M.

70. In terms of market realities and programming needs, the CMPA has repeatedly highlighted in numerous regulatory submissions that the Canadian English-language feature film industry is facing a funding crisis because English-language broadcasters in general no longer support Canadian feature films as they once did. We wish to underscore the widely-accepted truth that this funding crisis is with respect to English-language films, not French-language films.

71. Indeed, research we previously submitted demonstrated a significant downward trend in the financial support for English-language feature films provided by Canadian television broadcasters.[43]

72. For all these reasons, the CMPA submits that, of the total of $44.8 million in TV On-Screen benefits that BCE should now direct to supporting Canadian feature films in light of the pay TV/PPV movie services it is acquiring, **$28 million - $32 million** should be allocated to English-language film support.

73. Alternatively, we submit that the entire $16 million increase in TV On-Screen benefits resulting from inclusion of the $312 million improperly added to the value of the "excluded" assets (as argued above) should be allocated to support English-language feature films. This would bring the total for English-language feature films up to **$24.25 million**, while preserving the amount of funding BCE proposes for French-language film support. It would represent a ratio relative to French-language film support of 54:46.[44]

74. Our approach leaves the total amounts allocated to English-language and French-language "Other PNI" unchanged from BCE's proposal, at $24.56 million and $43.65 million, respectively. This is an acknowledgement of the fact that, while the pay TV services are primarily movie-based, they also offer other forms of PNI, including "edgy" drama and comedy series, and should be encouraged to continue doing so. It also reflects the fact that BCE is acquiring other French-language services which will offer PNI.

Feature Film Contributions Should be through the Harold Greenberg Fund

75. The CMPA appreciates that Telefilm Canada ("Telefilm") is pursuing new sources of Canadian feature film financing through its new Private Development Fund. We submit, however, that it is inappropriate for contributions to a government agency such as Telefilm to qualify as benefits under the Commission's tangible benefits policy. Like the

[43] *Canadian Television Broadcasters' Financial Participation in the Production of English-language Theatrical Films Supported by Telefilm Canada Under the Main Program of the Canada Feature Film Fund*: *see* the CMPA's 27 September 2011 intervention regarding Astral's licence renewal applications, available at http://www.cftpa.ca/government_relations/pdfs/2011-09-27-CMPA%20Astral%20GLR%20Submission.pdf, at Appendix A, http://www.cftpa.ca/newsroom/pdf/studies/2011.09.BroadcasterSupportToEnglishTFCFeatureFilms(FINAL).pdf.
[44] 24.25/44.8 = 54%. 20.55/44.8 = 46%.

Commission, Telefilm is a creation of the federal government and its mandate is established through an Act of Parliament. Like the Commission, Telefilm is funded primarily through the federal government's allocation of general tax revenues. Allowing BCE to claim contributions to Telefilm as qualifying benefits would therefore be as inappropriate as allowing it to make contributions to the Commission or any other government agency and then advance a similar benefits claim.

76. The CMPA submits that, in these circumstances, the most appropriate recipient of benefits intended to support Canadian feature films is the Harold Greenberg Fund, which is both an independent and a private (rather than public) entity.

77. Accordingly, it is our position that all of the benefits allocated to support Canadian English-language feature films should be directed to the HGF.

Ensuring Incrementality

78. In addition to the above concerns regarding the inadequate level of benefits funding BCE proposes to allocate to support Canadian English-language feature films, the CMPA submits (as we did in our previous BCE-Astral intervention) that BCE's current proposal would fail to provide *incremental* feature film funding.

79. As the Commission is aware, prior to last year's Astral licence renewal decisions, TMN had long been required by COL to expend not less than $1.3 million each year on script and concept development. The Commission removed this obligation when it brought Astral within the group-based licensing approach.[45]

80. When subject to the above-noted COL, Astral contributed the required $1.3 million annual script and concept development funding to the HGF. The $714,000 which BCE now proposes to contribute annually to the HGF for English-language feature films[46] would therefore represent just about one-half of TMN's former regulatory obligation. While perhaps "incremental" in a very narrow, technical sense, in reality BCE's contribution to the HGF will not lead to any programming "that is new or enhances that offered by the existing licensee."[47]

81. To be truly incremental, BCE's annual contribution to the HGF must be large enough to make a real difference in the creation and production of new English-language feature films and therefore must substantially exceed what Astral has historically directed each year to the HGF.

[45] Broadcasting Decision CRTC 2012-241, http://www.crtc.gc.ca/eng/archive/2012/2012-241.htm.
[46] BCE's proposal is $5 million over 7 years to the HGF for Canadian English-language feature films.
[47] *Ibid*, above note 32.

The Benefits Payment Schedule

82. As we have highlighted once again in this submission, the funding crisis which the Canadian English-language feature film industry is facing is happening *right now*. As the Starlight application has demonstrated, Canadian English-language feature films are "orphans in the Canadian broadcasting system."[48] It is therefore critical that the benefits from this transaction which will be directed to support English-language feature films begin to flow as soon as possible.

83. The CMPA acknowledges that the Commission has historically required benefits to be paid in roughly equal installments over no more than 7 years. That payment schedule, however, reflected the then-typical length of a broadcaster's licence term. Such lengthy licence terms are no longer the norm: in its 2011 group licensing decisions, the Commission began to impose shorter, 5-year licence terms "given the pace of change in the broadcasting industry and the desire to assess the impact of the new group-based approach".[49] Subsequently, and presumably for the same reason, the Commission also established a five-year term for Astral[50]; indeed, the Commission has characterized 5-year terms as its new "general approach" because of "the rapidly evolving broadcasting environment".[51]

84. Since the Commission's general approach is now to license broadcasters for no more than 5 years and since BCE's existing CTV services as well as the Astral services are subject to such 5-year terms, the CMPA submits it would be appropriate to require BCE to pay out the benefits flowing from this transaction in roughly equal installments over 5 years.[52] The rationale for shortening the term for licence renewals - the uncertain future in light of the rapidly evolving broadcasting environment - is equally applicable in respect of benefits packages, and is particularly applicable with respect to Canadian English-language feature films given the intense pressures they are facing in terms of financing.

85. Any benefits payment schedule longer than 5 years would create too uncertain a future, particularly given the immediate challenges facing Canadian English-language feature films.

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[48] Starlight Supplementary Brief, pp 6 - 8.
[49] Broadcasting Decision CRTC 2011-441, *Group-based licence renewals for English-language television groups – Introductory decision*, http://www.crtc.gc.ca/eng/archive/2011/2011-441.htm, at par. 11.
[50] *Ibid*, above note 45.
[51] Broadcasting Decision CRTC 2012-292, *Various national and regional video-on-demand programming undertakings – Licence renewals and amendments*, http://www.crtc.gc.ca/eng/archive/2012/2012-292.htm, at par. 90.
[52] We note that Rogers Media proposed a 5-year benefits payout schedule in its recent application to buy The Score: see Broadcasting Notice of Consultation CRTC 2012-13, http://www.crtc.gc.ca/eng/archive/2013/2013-12.htm.

86. We also submit that the payout period for BCE's benefit contributions to English-language "Other PNI" should be 5 years, commencing in the first year as with other benefits. BCE should not be permitted to push out the beginning of those payments to 2017 as it proposes: given recent Canadian programming successes, now is the time to increase the level of support, not slow the momentum down.

Spending Benefits on the Services Purchased

87. BCE has advised that its intention is to allocate the English-language "Other PNI" benefits wherever it deems the expenditures appropriate within its combined CTV-Astral stable of services.[53] We oppose this approach.

88. The purpose of the Commission's benefits policy is to replicate the promises a successful applicant would otherwise have had to make in a competitive licensing process to secure licence(s) for the assets now being acquired. In this respect, the purpose of benefits is to ensure that the advantages of a transaction outweigh the disadvantages, and that the transaction is in the public interest because it will foremost yield measurable improvements to the communities served by the broadcasting undertakings being acquired. Accordingly, BCE must be able to demonstrate that the Astral benefits to be directed to English-language programming initiatives will serve, first and foremost, to improve the programming on TMN/Encore/VCC. BCE must not be allowed to exploit the benefits policy in a manner that, by diverting the benefits elsewhere, could actually serve to erase the nature of the services it is buying.

89. To this end, the CMPA submits that the Commission should require that any program produced or acquired using benefits designated for English-language "Other PNI"[54] be broadcast *first* on TMN, and that the incrementality of the associated expenditures be measured as against TMN's existing obligations.[55]

Regional Offices

90. The CMPA appreciates that BCE has committed to re-establish CTV's former regional development offices in Vancouver and Halifax. Missing from this commitment, however, is a similar commitment to re-establish the regional office that used to exist in Winnipeg and the *English-language* regional office that used to exist in Montreal.[56]

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[53] BCE Supplementary Brief, at par. 175.

[54] This does not need to be a requirement in respect of benefits allocated to the HGF, since it is an independent fund.

[55] Since TMN is the only one of the three English-language services which broadcasts original, first-run PNI.

[56] BCE has committed to appointing "two new Canadian programming champions, one for French in Montreal, and one in Toronto for English" (see BCE Supplementary Brief, at par. 156), but has not committed to an English presence in Montreal.

91. One of the Commission's objectives in establishing its Diversity of Voices policy was "[t]o ensure that audiences have access to a diversity of programming - especially national, regional and local content."[57] It is important for the Commission to appreciate, however, that the mere existence of a regional office will have little, if any, positive impact on achieving the regional aspect of this objective absent the regular presence of senior commissioning staff who have real programming decision-making power.

92. Moreover, while the regular presence of senior commissioning staff in re-established regional offices has the potential to make a real difference for independent producers located in reasonable proximity to those offices, it will not benefit producers based elsewhere – for example, in the other Prairie and Atlantic provinces. Still needed therefore is a real, enforceable commitment from BCE to send senior commissioning staff on a regular basis to those other locales. In this respect, the CMPA recognizes that, in its group licensing decisions, the Commission recently required each of the four English-language ownership groups to file detailed regional production plans that include information on proposed outreach efforts for the coming broadcast year.[58] While this reporting obligation is welcome, the reality is that CMPA members in the regions still do not have reasonable and regular access to broadcaster personnel who can – and will – make regional program commissioning decisions.

93. We therefore call on BCE to supplement its commitment to re-open the Vancouver and Halifax regional offices by also committing in its Reply to re-open the other regional offices and to send senior commissioning personnel to all the various regions on a regular basis to both hear proposals from regional producers and make decisions, as appropriate, regarding those proposals. We also call on the Commission to hold BCE to these commitments so as to ensure that regional production actually does benefit from this transaction in a real and immediate way.

Reporting

94. Given the above-noted need to ensure that the English-language benefits flowing from this transaction accrue first and foremost to TMN, it is critical that the Commission require BCE to provide annual reports which describe in a full and completely transparent manner how it has spent such benefits. Amongst other things, the report should confirm that each program supported by the English-language benefits was first broadcast on TMN.

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[57] Broadcasting Public Notice CRTC 2008-4, http://www.crtc.gc.ca/eng/archive/2008/pb2008-4.htm, at par. 125, emphasis added.
[58] *Ibid*, above note 49, at pars 102-107.

Conclusion

95. As the CMPA argued in our first BCE-Astral intervention, BCE's increased concentration of ownership resulting from its purchase of Astral will limit programming diversity if it leads to a further decline in broadcaster support for Canadian English-language feature films.

96. Given the loss of another buyer for content in the market, BCE must demonstrate that its takeover of Astral's English-language movie-based services will generate a truly meaningful level of increased support for the production of Canadian English-language feature films; based on the proposal it has tabled in this second application, however, BCE has failed to prove that this deal represents a net benefit for Canadians in that respect.

97. The Commission should not permit BCE to short-change the communities served by Astral's English-language movie services by refusing to allocate substantially more benefits funding to support programming for those communities.

98. Nevertheless, as we also argued in our first BCE-Astral intervention, this transaction <u>could</u> benefit Canadian television consumers and the broadcasting system as a whole <u>if</u> BCE – or the Commission, if required – takes the necessary steps to ensure the result is the creation and presentation of more and better Canadian English-language feature films. We look forward to BCE committing to such steps in its Reply to this submission.

All of which is respectfully submitted.

Sincerely,

original signed by

Michael Hennessy
President & CEO

Attach.

cc. ndorval@astral.com

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