CMPA
Canadian Media
Production Association
Screen-based entrepreneurs

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12 January 2015

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

Filed Electronically

Dear Mr. Traversy:

Re: Part 1 Application: Bell Media Inc. - Additional tangible benefits
Application 2014-1178-5

1. The following are the comments of the Canadian Media Production Association (the CMPA)[1] with respect to the proposal by Bell Media Inc. (Bell), as set out in the above-noted application, to allocate supplementary benefits funding to English-language on-screen initiatives.

2. The CMPA supports Bell's proposal provided it is amended so as to ensure it provides support for Canadian English-language theatrical feature films.

Background

3. As part of Broadcasting Decision CRTC 2013-310 (Decision 2013-310), in which it approved the purchase by BCE Inc. (BCE) of Astral Media inc. (Astral)[2], the Commission established that the purchaser would be required to pay additional tangible benefits in respect of any shortfall between the value the Commission attributed at the time to the television programming undertakings that BCE was required to divest (as a condition of approval) and the price subsequent purchasers actually paid for those undertakings.

4. Bell has now advised the Commission that the shortfall amounted to $126M. It has proposed to allocate the additional applicable benefits ($12.6M, representing the

[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.
[2] http://www.crtc.gc.ca/eng/archive/2013/2013-310.htm.

requisite 10%) according to the same ratios applied in Decision 2013-310. To that end, Bell proposes to allocate 85% of the $12.6M ($10.7M) to on-screen initiatives, of which 31% ($3.3M) would be allocated to English-language on-screen initiatives.

5. Bell also proposes to allocate all the additional English-language on-screen benefits "to previously approved categories". To that end, it proposes to allocate the entire amount of $3.3M to Programs of National Interest (PNI) over the next 6 years (since one year of the original 7-year benefits payout obligation has already passed).

Supporting English-Language Theatrical Feature Films through the Harold Greenberg Fund

6. In our April 2013 intervention in response to BCE's application to purchase Astral, the CMPA noted that the most important English-language broadcasting undertakings which BCE was acquiring were the two movie-based pay TV services, TMN and Encore (the only other Astral English-language services it planned to retain were two very small local television stations serving rural communities in BC). For that reason, we argued that a substantial portion of the applicable English-language on-screen benefits should be allocated to support Canadian English-language theatrical feature films. In doing so, we reiterated that the Canadian English-language theatrical feature film industry was facing a funding crisis because English-language broadcasters in general no longer support Canadian feature films as they once did.

7. That crisis still exists, for the same reason.

8. Moreover, the crisis is worsening due to reduced broadcaster contributions to the Harold Greenberg Fund (HGF), a long-standing and critical source of financial support for Canadian theatrical feature films. Of special note is the impact of Bell's surprise decision last fall to shut down the Viewer's Choice Canada (VCC) Pay per View service, which it had just acquired as part of the Astral deal. As reported in Playback at the time, VCC's previous contributions to the HGF – even at their lowest point – accounted for about 25% of the funding the HGF distributed annually, amounting to $500,000 - $600,000 per year. Playback reported that the loss of those funds would mean the HGF would have to fund fewer projects at the production stage.[3]

9. The CMPA recommends that, to mitigate the negative impact on the HGF of Bell's decision to shut down VCC, Bell should be required to allocate the <u>entire</u> $3.3M in additional English-language on-screen benefits to the HGF.

10. In making this recommendation, we note that Bell never indicated its intent to shut down VCC in its application to purchase it along with the other Astral assets, and thus there was no discussion at the time of the associated negative impact that such a move

[3] *Viewer's Choice closure reverberates at HG Fund*, Playback Online, 5 November 2014, http://playbackonline.ca/2014/11/05/viewers-choice-closure-reverberates-at-hg-fund/.

would have on the HGF, or of the need to find alternative funds to mitigate the associated damage to funding for theatrical feature films. Accordingly, we submit that the Commission should reject any suggestion that Bell's allocation of benefits to the HGF, as previously approved in Decision 2013-310, should now qualify as such mitigating funding; such funds have only become necessary since that Decision was rendered.

Alternative: Allocating the Additional Benefits in the Same Manner as Already Approved

11. We submit that adopting our above recommendation is appropriate under the circumstances. However, if the Commission is unwilling to do so, we alternatively submit that, at a minimum, Bell should be required to allocate the additional English-language on-screen benefits in the same manner as they were allocated in the benefits package which the Commission approved in Decision 2013-310.[4]

12. In that respect, we note that, per the originally-approved English-language on-screen benefits package (totaling $46.2M), 18% ($8.25M) was allocated to support English-language theatrical feature films (through $5M to the HGF and $3.25M to Telefilm), with the remaining 82% ($38M) allocated to independently-produced PNI. Accordingly, to be consistent with "previously approved" allocations, we submit that 18% of the additional benefits ($594,000) should also be allocated to support English-language theatrical feature films, leaving the remaining $2.71M (82%) for independently-produced PNI. Again, given Bell's decision to close VCC has caused a funding drop for the HGF, we submit it would be appropriate in the circumstances to allocate the entire $594,000 to the HGF.

Allocating the Benefits in Accordance with the Commission's New Benefits Policy

13. In a procedural letter dated 28 November 2014, the Commission asked Bell whether the additional benefits payable should be allocated in accordance with the Commission's new approach to benefits as announced in Broadcasting Regulatory Policy CRTC 2014-459[5] rather than in accordance to the initiatives approved in Decision 2013-310, as Bell has proposed. In its 8 December 2014 response, Bell argued that Decision 2013-310 "is a final and binding decision", and pointed to the fact that, in Appendix 2 of that decision, "the Commission clearly outlined in condition of licence 10 a) the requirement that the shortfall in tangible benefits be applied in accordance with [Decision] 2013-310."

14. Bell further argued in its response that it "is bound by this condition of licence" and that to use the recently announced benefits policy "would have the effect of materially

[4] As further refined in Broadcasting Decision CRTC 2014-62, http://www.crtc.gc.ca/eng/archive/2014/2014-62.htm.

[5] http://www.crtc.gc.ca/eng/archive/2014/2014-459.htm.

altering a final and binding decision and amending the express terms of a condition of licence, neither of which the Commission has the ability to do."

15. The CMPA agrees with Bell's argument, but only in so far as it means Bell would indeed apply the shortfall in tangible benefits in accordance with Decision 2013-310 – which means allocating additional benefits for English-language on-screen initiatives to support English-language theatrical feature films.

Conclusion

16. While it is possible for Bell to spend a portion of on-screen benefits allocated to PNI to support Canadian theatrical feature films[6], that *possibility* is not a substitute for being required to allocate benefits to initiatives whose sole purpose is to support such films.

17. Accordingly, the CMPA reiterates that all – or at least a consistent percentage – of the additional on-screen benefits payable should be allocated *specifically* to support theatrical feature films, in this case through the HGF.

Sincerely,

original signed by

Michael Hennessy
President & CEO

cc du-yi.leu@bellmedia.ca

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[6] Since PNI can include feature films.