Writers Guild of Canada

Change of Effective Control – BCE/CTV

Oral Presentation to the February 1, 2011 Public Hearing
Broadcasting Notice of Consultation CRTC 2010 - 926

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Change of Effective Control – BCE/CTV

[**Maureen Parker**]

Good morning. My name is Maureen Parker and I am the Executive Director of the Writers Guild of Canada, a national association representing over 2000 professional English-language screenwriters. To my [left] is Kelly Lynne Ashton, Director of Policy of the Writers Guild. Also, with us is Joel Fortune, regulatory Counsel and author of the Joint Report filed by ACTRA, DGC, CMPA and the WGC.

[Introduction]

The WGC is supportive of BCE's acquisition of CTV, subject to the appropriate application of the CRTC's benefits policy and an allocation of BCE's benefits package consistent with that policy. While we represent the interests of Canadian screenwriters, we also serve as an important balance in the system by advocating for Canadian programming. Our comments today reflect those responsibilities.

[Calculation of Benefits]

We were pleased to hear Tuesday that BCE is no longer taking the position that it does not have to pay benefits on this transaction. However BCE is still attempting to minimize their payment of benefits through their valuation of the assets and their proposal that the conventional broadcasting assets should be entitled to a discounted calculation of benefits. We support the Commission's review of BCE's valuation as it addresses several issues that we raised in the Joint Report. We look forward to receiving the Commission's final calculation of the valuation after its questions, such as those relating to the valuation of synergies, have been addressed. For the purposes of today's discussion we are working with the valuation of $2.67 billion put forward by the Commission on Tuesday, which would result in a benefits package of $236.4 million.

BCE has argued that it should be able to discount benefits paid based on conventional assets, as Shaw was recently allowed to do, because to do otherwise would give Shaw a competitive advantage. However, as the Commission pointed out, the decision to approve a discounted rate of 5% on Canwest's conventional assets was because their assets were under CCAA protection at the time and because Shaw needed assistance to bring these assets back to financial health. On the other hand, none of CTV broadcasting assets are in financial difficulty. All broadcasters incurred losses during the 2009 global recession but CTV's recovery may have been slowed by its 2010 expenditures on the Winter Olympics. Nonetheless, we read in CTV's Group Licence Renewal application that it is projecting a financial recovery of all of its broadcast assets including a positive PBIT for the next few years. The circumstances are clearly not comparable and BCE should not receive a discounted rate.

[Allocation of Benefits Package]

BCE is also arguing that they do not need to follow the Commission's past practice by allocating the bulk of its benefits package, or 85% to 90% of the television benefits, to onscreen programming because apparently there is plenty of money in the system for programming. BCE says that the upcoming expenditure requirement on Programs of National Interest under the Group Licence Renewal, will be a source of funding. Yes it will, but that hearing has yet to determine how much money broadcasters will have to spend, and if it will indeed mean more money in the system. As well, the

PNI CPE is about ensuring broadcasters make an appropriate contribution to Canadian programming, while the purpose of the Tangible Benefits Policy is to create incremental spending. BCE also refers to other benefits packages such as the Shaw-Canwest, the Rogers-City and their own unspent benefits from the 2000 transaction to support their claim that there is plenty of money in the system for programming. Again, these benefits are all supposed to create <u>incremental</u> programming so that Canadian audiences benefit when broadcasting assets change hands.

Let's remember that broadcasters contribute on average only 30% of the budget of television programs[1]. Valerie Creighton, President of the Canada Media Fund, recently stated that the CMF has 50% more demand than it can fund[2]. As the CMF contributes only about 15% of production budgets, producers struggle to finance the balance of the budget. The shortfall is covered by independent funds, distribution advances and tax credits, which were intended to capitalize their companies rather than finance production. So there really isn't enough money in the system. In the

[1] CMPA Profile 2010 pg. 44
[2] The Canada Press, http://www.cbc.ca/arts/film/story/2011/01/24/canadian-media-fund-requests.html

past, the Commission has supported 80 to 90% of the benefits being spent on programming which resulted in more shows being produced and broadcast. We need funding to create and produce high quality Canadian programming that will compete with U.S. shows for Canadian audiences.

[Kelly Lynne Ashton]

BCE is now proposing $68.2 million for Onscreen Programming. This is only 31.4% of their television benefits. We recommend that allocations for inappropriate infrastructure programs, and any additional funds from a review of the valuation, be re-allocated so that at least 85% of the television benefits, or $184.45 million, is dedicated to onscreen programming. This would mean re-allocating HD conversion, A Channels and the additional funds from the Commission’s review of the valuation, to onscreen programming. We also suggest re-allocating or reducing the allocation to the MPEG 4 conversion, should the Commission find it to be an acceptable allocation, to make up the difference.

BCE has committed to spending $53.2 million of the Onscreen Programming package on Programs of National Interest and associated digital media content. BCE has declined to allocate funds between PNI and digital media. While we understand the rationale for flexibility to take into consideration changes in the marketplace, we suggest that there be a minimum allocation to PNI. Television is still the most popular form of entertainment programming and requires the most support. We would suggest that at a minimum 75% of the $53.2 million be allocated to PNI programming.

Another detail of the allocation to Onscreen Programming is the provision that at least 50% of the PNI be available to be spent on 8-point production. 8-point production does not fully support a domestic talent pool as it means the ability to engage non-Canadian screenwriters or stars or directors. A Canadian talent pool is essential to our ability to tell our own stories. We recommend that Onscreen Programming be therefore limited to 10-point productions.

As we have in the last two CTV benefits packages, the WGC would like to work with BCE and CTV to create a specific development program for Canadian drama. Development of Canadian programs and specifically drama, is seriously underfunded. Funded development is essential to improving the ratio of success for Canadian programs. As CTV says in its 2008 Benefits Report, “Flashpoint”, which came out of the Writer Only Development Program, “shows the great value of allowing a writer to develop their creative vision over time so that compelling stories can be told to Canadians.” Many other movies of the week and series pilots were also developed and produced under this program. We recommend that $7 million from the Onscreen Programming funds be allocated to drama development. This would be comparable to the allocation to the Writer Only program under the BCE-CTV benefits package.

As mentioned, BCE’s allocations to infrastructure are inappropriate and self-serving. They do not benefit the Canadian broadcasting system as a whole and they are not costs that would not otherwise occur but for the benefits package. For example, the allocation of $24.5 million to the conversion of local stations to HD production facilities is aimed at improving smaller CTV production facilities. There is no benefit to the broadcasting system as a whole. As

BCE admitted during this Hearing, this allocation will not fund any incremental programming but will merely 'enhance the viewing experience'. As well, funding this conversion from the benefits package would give BCE a competitive advantage over small market stations that do not have access to a benefits package.

We understand the Commission's perspective that the MPEG-4 conversion allocation would be public benefits but we also feel that such an expenditure would be a cost of doing business. Allowing BCE to access benefits funding to subsidize the cost of this conversion would provide BCE with a competitive advantage over those distributors without access to a Benefits package. As we mentioned, we recommend that the necessary funds are re-allocated to Onscreen Programming in order to meet the ratio identified by past practice and if the Commission deems MPEG-4 conversion to be an acceptable expenditure, the balance could subsidize BCE's costs.

Finally, while we support local television and have no problem with benefits funding that will support additional hours of local programming in markets currently not being served, the allocation of $25 million aimed at subsidizing the /A\ Channel stations is inappropriate. As Commissioner Cugini pointed out, $10 million has been allocated to fund a digital transition that is already in the works and another $10 million has been allocated to maintain existing programming. These are clearly not incremental costs that would not otherwise be undertaken without the benefits. The $5 million for master control seems to be a clear infrastructure cost. It is inappropriate to propose to use benefits money to stave off losses, particularly when Group Licence Renewal will likely result in synergies that should benefit the /A\ Channels.

[Maureen Parker]

[Conclusion]

In summary, we urge the Commission to apply its benefits policy to this transaction in a manner consistent both with the policy and with past precedent in order to ensure transparency and consistency. This is essential to the integrity of the system and to ensure that Canadians benefit from this transaction. The Commission's tangible benefits policy should apply to this transaction at the rate of 10% for all television assets and 6% for radio, based on a valuation of the assets as the Commission shall determine. The tangible benefits should be:

- 10% of the value of the transaction for all television assets
- Paid in equal installments over the 7 year term
- Incremental and based on clearly identified allocations
- No expenditures which are the cost of doing business
- 85% allocation to onscreen expenditures

Finally, we would ask the Commission to provide us with the opportunity to comment on any revised benefits packages that BCE may submit at the end of this Hearing in response to the Commission's questions and concerns.

We would be happy to answer any questions that you might have.