Writers Guild of Canada

August 9, 2012

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

Submitted via E-Pass

Dear Mr. Traversy,

Re: Broadcasting Notice of Consultation CRTC 2012-370 – Application (Application 2012-0516-2) by BCE ("BCE") on behalf of Astral Media Inc. ("Astral") for authority to change the effective control of Astral, and its licensed broadcasting subsidiaries.

Introduction

1. The Writers Guild of Canada (the WGC) is the national association representing over 2200 professional screenwriters working in English-language film, television, radio and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system.

2. The WGC wishes to offer **conditional support** of the above-mentioned Application for authority to change the effective control of Astral, subject to BCE and the Commission addressing the following comments and concerns. The WGC **wishes to appear** at the Public Hearing scheduled to commence September 10, 2012 in order to further elaborate on the following issues from the perspective of English-language screenwriters.

Executive Summary

3. The WGC has confined its remarks primarily to the English-language television components of the transaction and will leave to better informed stakeholders the issues of the purchase of Astral's radio assets and its French-language television services.

4. The WGC understands that consolidation is a necessary process as Canada's broadcasters seek to gain efficiencies and strengthen their position in the market through acquisitions. We do have concerns however, about the impact that

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consolidation has on the diversity of programming in the Canadian broadcasting system. Unlike recent transactions such as Shaw-Canwest, where the purchase was necessary to keep the Canwest services alive and together, there is little intangible benefit to the Canadian broadcasting system from this transaction. Astral wants to sell and BCE wants to strengthen its position in the French-language market. BCE is already the leader in the English-language market and the Astral English-language services will have minimal improvement on that position. The shareholders of these two companies are the primary beneficiaries of this transaction. The WGC sees no reason to request that the Commission disallow the transaction but given the lack of intangible benefit to the broadcasting system and the potential harm due to increased media concentration, we respectfully suggest that the Commission has a higher duty of care to ensure that the tangible benefits are based on an appropriate valuation and are of clear, incremental benefit to the Canadian broadcasting system.

5. Accordingly, the WGC asks the Commission to reject BCE's assurances that this acquisition raises no concerns regarding the concentration of ownership in television broadcasting. With Astral's services, BCE's share of the English-language viewing audience will grow to 38.7% which is beyond the safe threshold established in the Diversity of Voices policy. It is therefore incumbent on the Commission to do its utmost to ensure that the valuation is appropriate in size and allocation, and that each element of the benefits package is truly of benefit to the system as a whole.

6. With no access to the confidential financial data submitted with BCE's application, the WGC relies on the Commission to scrutinize all aspects of the valuation. Our main concerns are how the radio and unregulated assets as well as the minority interests that Astral jointly owns are calculated. There is ample room in these areas for BCE to manipulate the value of these assets to produce an artificially smaller benefits package. Over the years, broadcasters have repeatedly put forward inadequate valuations, which the Commission has routinely caught and subsequently increased after a thorough examination of the transaction details.

7. As for the English-language aspects of the benefits package, the WGC objects to a number of BCE's proposals as they do not benefit the Canadian broadcasting system. First of all, BCE's allocation of 68.8% towards onscreen benefits is unacceptable. We urge the Commission to revise this allocation to meet the Commission standard of 85%. Not only does it fall far below the standard, this allocation is even lower than previous exceptions to the rule including the 71.6% record low when BCE acquired CTV. Secondly, the proposed social benefits are inappropriate. The allocation of $40 million to BCE's subsidiary Northwestel has no relation to broadcasting. It is a telecommunications and infrastructure cost which the Commission has repeatedly asked the company to undertake.

8. Regarding the contribution to Canadian Film Festivals, the WGC urges the Commission to remove it from onscreen benefits and include it in the 15% of benefits that are directed towards social benefits. Although festivals encourage audiences to see more Canadian films in the theatre and eventually television screens, they have little or no impact on the development and production of onscreen broadcast programming.

9. Finally, while we commend BCE for offering the Bell Mental Health Initiative, the WGC asks the Commission to exclude it from the benefits package as well. This program falls outside benefits policy because it bears no relation to broadcasting and is an internal, ongoing program which we could expect the company to continue to offer regardless of the availability of benefits.

10. Any funds created from a) the removal of Northwestel and the Mental Health Initiative, b) the shift of the Film Festival program to social benefits and c) additional amounts from a possible increased valuation should be redirected to Children and Youth Programming and Other PNI.

11. For this complex transaction, the WGC also urges the Commission to instruct BCE to develop a clear measure of incrementality. BCE has not provided a means to measure how the benefits would be incremental to the money that they would already have spent to meet their CPE and PNI requirements. This is important to determine whether the benefits are in indeed an addition to existing CPE and PNI requirements.

12. Finally, we urge the Commission to reject BCE's proposal to spread the benefits over 10 years. Rather, BCE should adhere to a 5-year policy of equal annual payments. This would help prevent BCE from delaying payments which it has done in the past.

Valuation

13. Given the high level of confidentiality that BCE has been granted for its financial data, the WGC is not in a position to carefully review BCE's valuation or challenge assumptions upon which the valuation was made. We trust that the Commission has conducted its usual due diligence in this regard and will make the necessary adjustments to the valuation. However, there are a few issues that we would ask the Commission to keep in mind as it conducts that review.

14. Valuation is a very complicated and subjective exercise. In this context it is also one that has a very material impact on the size of the benefits package that BCE is required to pay as a result of the change in control of Astral. As BCE and every other purchaser have done in the past, we assume that wherever possible, choices have been made in the calculation of the value of the assets so as to reduce the size of the benefits. There are a few aspects of the valuation that we are particularly concerned with.

15. We ask the Commission to pay particular attention to the allocation between radio and television assets to ensure that it properly reflects the value of each segment of Astral Media. As radio attracts a lower percentage (6%) formula for calculation of benefits than television (10%) does, it is possible that radio was valued higher than television to reduce the amount of benefits payable. We also ask that the value of the excluded assets, such as digital media, out-of-home and other unregulated divisions, be carefully reviewed. In particular, those aspects of digital media, such as websites affiliated with broadcasting services, which are operated

as part of the broadcasting businesses, should be carefully reviewed. For example, it is an artificial exercise to value the website Family.ca separately from the Family Channel television service which it promotes and extends. As well, broadcasters have often told the Commission that broadcaster websites earn little revenue as part of their argument that new media broadcasting should remain exempted from regulation. If that is true, then these websites should have little value as assets.

16. The WGC objects to the exclusion of Historia, Séries+, Teletoon English, Télétoon Français, Teletoon Retro English and Télétoon Retro Français (the "Partnered Services") from the valuation of Astral Media. While there has been conflicting precedent from the Commission on this point, in the recent Broadcasting Decision 2011-163, the Commission did decide to include CTVglobemedia's minority interest in NHL Network and Viewer's Choice in the valuation of CTVglobemedia because "it is the Commission's practice in transactions involving multiple assets to include minority interests in broadcasting undertakings in the transaction value."[1] Minority assets were also included in the valuation of the Alliance Atlantis broadcasting assets when acquired by Canwest[2] and then again when Canwest was acquired by Shaw[3]. All of these decisions are more recent than the contradictory decisions cited by BCE and demonstrate the Commission's current position on the valuation of minority assets.

17. It must also be noted that the Partnered Services are all owned 50% by Astral and are therefore not minor interests. These are substantial interests that will bring audiences and programming opportunities to BCE. There are no restrictions that prevent BCE from airing programming that it funds through the benefits packages on the Partnered Services as they are proposing to broadcast those programs whenever and wherever it is most appropriate throughout the BCE services. The Partnered Services cannot be said to be operated completely independently of their owners even now as Teletoon's offices are in the same location as Astral's and Historia is branded as "membre de la famille astral". It can be expected that BCE will seek to find efficiencies through the ownership of the Partnered Services. There is both precedent and logic to including the Partnered Services, to the extent that they are owned by Astral, in the valuation of Astral.

Diversity of Voices

18. BCE has stated that BCE's increased share of the English-language television viewing audience as a result of the Astral acquisition should present 'no concern' to the Commission in light of the Diversity of Voices Policy[4]. BCE's argument is

[1] Broadcasting Decision CRTC 2011-163 para 12

[2] Broadcasting Decision CRTC 2007-429

[3] Broadcasting Decision CRTC 2010-782

[4] Broadcasting Public Notice CRTC 2008-4 ("Diversity of Voices Policy")

that either the English-language audience share is calculated as a percentage of all television (including non-Canadian services) and is below the 35% threshold for concern or it is a percentage of only Canadian services and therefore 38.7% of the audience share but Astral's English-language services carry no news and therefore the concerns outlined in the Diversity of Voices Policy do not apply.

19. The WGC objects to both arguments and suggests that the Commission should be concerned with the increased television concentration that will result from this transaction. Firstly, the Commission has been tracking audience share by ownership group since 2006-07 though it was first reported in Communications Monitoring Report 2009[5], the year after the Diversity of Voice Policy was released. The Commission has consistently reported on the viewing audience of Canadian services as a percentage of all Canadian services. It would not be consistent or logical for the Commission to track one formula in its Communications Monitoring Report yet use another formula in its policy. Therefore, once the transaction is complete, the new, larger BCE will have 38.7% of the English-language viewing audience, putting it into the category where the Commission must examine the transaction carefully.

20. Second, while the Diversity of Voices policy does focus on editorial content, it also confirms the importance of diversity of content and the Commission's role in "ensuring that Canadians receive programming from different sources"[6]. Screenwriters are well aware that one of the downsides to media concentration is that there are fewer doors to knock on, fewer programmers and fewer decision-makers who determine what programs will be commissioned. Consolidation and the Group Licence Policy also means that programmers are not just picking a show that will work for a particular service but one whose cost can be amortized by airing it across the group on a number of services. We can already see the amortization of programming across a group. For example, you can watch "The Listener" on CTV, CTV2 and Bravo. The Bell purchase of Astral is particularly troublesome for two reasons. The first is that TMN has made a name in commissioning, with Movie Central, edgy, adult dramas such as "Call Me Fitz" and "Durham County" that cannot be broadcast on mass market networks such as CTV and Global because of their subject matter, use of language and/or nudity. If TMN must now commission programs that can also be aired on Bravo, CTV and CTV2, those programs will be much more mass market and less niche-oriented. They are likely to be a lot of police procedurals. Canadian screenwriters are very concerned about the potential loss of Canada's only outlet for challenging adult drama.

21. As well, Family Channel programmers may be pressured to commission more family-oriented programming that could be aired on CTV or CTV2 rather than the tween-focused shows like "Connor Undercover" or "Overruled". While the CPEs

[5] CRTC Communications Monitoring Report 2009, Table 4.3.10 Viewing share of Canadian services by ownership group, pg. 134

[6] Diversity of Voices Policy para 19

and PNIs of each corporate group will be kept separate (at least for now), the benefits package is proposed to be spent over the entire larger group of services and therefore amortization of costs is likely. We must assume that with more drama services, BCE will amortize program costs across all of those services. Ultimately, this transaction means fewer places for screenwriters to take non-mainstream programs and fewer alternatives for their mainstream programs if one particular programmer does not like them.

22. The WGC is not suggesting that the Commission deny the transaction due to the Diversity of Voices concerns outlined above but that as a result of the increased potential harm to the Canadian broadcasting system, the Commission has a higher duty of care to ensure that the transaction benefits the Canadian broadcasting system. We ask that the Commission ensure that the valuation is appropriate in size and allocation and that each element of the benefits package is truly of benefit to the Canadian broadcasting system. We respectfully suggest that the Commission not make exceptions to existing policy should those exceptions not contribute to the Canadian broadcasting system and not approve this acquisition unless BCE makes significant changes to the benefits package as outlined below.

Benefits Package

23. There is much to commend in the BCE proposed benefits package but there are also some concerns which will be outlined below. The WGC's focus and comments are primarily on those benefits which support the English-language services. The WGC supports the allocations of funds to the Harold Greenberg Fund as over the years this Fund has supported the development and production of many high quality Canadian features which were then broadcast by TMN. Feature films are very difficult to finance in Canada so this will be a welcome influx of development and production financing and will help TMN to be able to continue to offer high quality Canadian feature films.

24. We also welcome the allocation of funds to Children and Youth programming as that is another underfinanced programming sector, however we would like it clarified that while the funding includes 'English-language family movies' it will not be limited to them as the volume of hours created by a television series is an essential part of building an audience and a talent pool. Creators, and programmers, should have the flexibility to commission either series or television movies as the market and the projects available dictate.

25. We also would propose for both the Children and Youth programming allocation and the Other PNI programming allocation that amounts be clearly set aside for development as well as production. Only with adequately funded development can successful television be produced. Development allows a project to be revised and refined and ensures that only the best projects are produced. It is much cheaper to work out creative problems in development than in production. If Canadian drama is to be successful with Canadian audiences, then development needs to be adequately funded.

Onscreen vs. Social Benefits

26. Our first concern is the breakdown between onscreen benefits and social benefits. As the Commission pointed out in the May 24, 2012 Deficiency Letter (Q.7), the Commission's general practice has been to require that the majority of benefits (85 – 90%) are to be spent on onscreen programming with the balance on social benefits. The logic behind this is that onscreen programming clearly benefits the Canadian broadcasting system and Canadian audiences immediately and for years to come. This transaction proposes onscreen programming at 68.8%. While BCE quotes the recent exceptions to the policy to justify the low allocation, BCE's proposal is still substantially lower than Shaw-Canwest (78.9%) and even lower than BCE-CTV (71.6%). More importantly, those two transactions were clear exceptions to policy made by the Commission to support improvements to the Canadian broadcasting system that were to impact significant segments of Canadian society. With BCE-CTV it was improving satellite delivery of local programming to ensure that all Canadians received local programming. In the case of Shaw-Canwest it was digital transmitters and set-top boxes to ensure that more Canadians were able to make the transition to digital broadcast signals.

27. The same circumstances do not exist in this benefits proposal. BCE is counting as social benefits an allocation to Northwestel called "Supporting Broadcasting's Digital Future" and an allocation to "The Bell Mental Health Initiative". We would also include as a social benefit the allocation to Canadian Film Festivals as that funding will have no impact on on-screen programming. Film Festivals have not been part of benefits packages in the past but part of social benefits. BCE should be familiar with this as CTVglobemedia included film festivals within their social benefits package for the CTVglobemedia purchase of CHUM Limited[7]. It is too much of a stretch to call film festivals an on-screen programming allocation because they are 'an important venue for the development of Canadian programming'. Film festivals promote Canadian and international feature films and their talent, and build audiences for those films. They give Canadians in different communities opportunities to see and celebrate feature films in theatres. Film festivals do not contribute directly to the creation or development of broadcast programming. Accordingly, the true split between on-screen programming and social benefits being proposed is actually 65.5%/34.5%. We support the allocation to Canadian film festivals as a social benefit because of the indirect benefit to the broadcasting system of celebrating Canadian feature films that may end up being broadcast, however the other two allocations are not appropriate for the benefits package at all.

28. BCE is proposing to allocate $40 million to Northwestel's Modernization Plan, which has been drafted as dependent on the funding from these benefits. The WGC objects to the proposal to allocate benefits money to this program on a number of grounds. Funding broadband in the North is a worthy program but it is a telecommunications cost. It does not benefit the Canadian broadcasting system. It is an infrastructure cost, particularly because it is part of a

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[7] Broadcasting Decision CRTC 2007-165, para 62

Modernization Plan that the Commission has required Northwestel to file[8]. The Commission was concerned that Northwestel had not been maintaining its telecommunications infrastructure in the North while its shareholders have been benefitting from a price cap regulatory framework. As the Commission pointed out “Northwestel has received over $20 million in an annual subsidy for the provision of service in remote communities and its annual income from operations has nearly doubled to $69.3 million in 2010”[9]. Rather than provide the Commission with what it asked for, Northwestel has gone beyond that to offer to install wireless broadband throughout the North provided that it can get the money from the BCE-Astral benefits package. This appears to us as a very self-serving proposal since BCE is trying to spend money intended to be directed to third parties for the benefit of the Canadian broadcasting system to fulfill its own existing telecommunications obligations that can and should be paid from that division’s ‘strong financial performance’[10]. We strongly urge the Commission to disallow this allocation.

29. The Bell Mental Health Initiative sounds like a worthy program and we commend BCE for taking on the task of raising awareness of mental health issues. However, we cannot see how this existing initiative can benefit the broadcasting system, nor how it is incremental. As the Commission stated in the last BCE acquisition: “television tangible benefit expenditures should be incremental, should be directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction and should generally flow to third parties, such as independent producers”. This is an existing program and BCE is asking to allocate funds internally to promote its own initiative, the “Bell Let’s Talk Day”. It is highly unlikely that they will not promote their “Bell Let’s Talk Day” without the benefits allocation. There is no evidence that these funds have not already been budgeted for. Finally, there will be little direct or indirect impact on the broadcasting system from promoting this initiative.

30. It may be useful to review past social benefits. In the first BCE-CTV transaction, the social benefits included allocations to Canadian Women in Communications for professional development programs, to the Media Awareness Network for media literacy initiatives and to the Academy of Canadian Cinema and Television to upgrade archive resources[11]. In the CTV-CHUM benefits package, social benefits included a Showrunner Bootcamp at the Canadian Film Centre, funding for the National Screen Institute’s Totally Television training program and a research study by the Alliance for Children’s Television on Canadian children’s programming[12]. These examples, and many more, clearly demonstrate that social

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[8] CRTC 2011-771

[9] Telecom Regulatory Policy CRTC 2011-771 preamble

[10] Telecom Regulatory Policy CRTC 2011-771 para 37

[11] Broadcasting Decision CRTC 2000-747

[12] Broadcasting Decision CRTC 2007-165

benefits are intended to indirectly benefit the broadcasting system by supporting those who create, work with and promote Canadian programming. BCE and the Commission departed from this policy with the allocation to supporting local television programming on satellite carriage but while the WGC continues to believe that it was an infrastructure cost and therefore inappropriate, it was clearly a cost that benefitted the Canadian broadcasting system.

31. We urge the Commission to reallocate the Bell Mental Health Initiative and the Northwestel Digital Futures proposals and confirm that the allocation for Canadian film festivals is a social benefit. We request that the English-language portion of at least 85% of the $43.5 million that needs to be reallocated, together with any additional benefits should the Commission increase the valuation of the Astral Media assets subject to benefits, be split proportionately between Children and Youth Programming and Other PNI Programming, as on-screen programming. These allocations directly support the Canadian broadcasting system and benefit audiences and our talent pool. Up to 15% of the benefits money could be allocated to social benefits such as the Canadian Film Festivals.

32. It has been said that there are sufficient benefits in the system already for PNI due to the benefits packages generated by the Shaw-Canwest and BCE-CTV acquisitions. However, the benefits policy has never been about need but about giving back to the broadcasting system to ensure that the purchaser is the best possible purchaser in a non-competitive process. The policy also ensures that corporate shareholders are not the only beneficiaries from the transactions as monies flow back to programming and therefore audiences. As part of our argument that broadcasters needed a CPE and PNI requirement, the WGC has always stated that benefits monies were a bonus to the system and should therefore not be relied upon to ensure there was sufficient Canadian programming. Assessment of appropriateness of benefits allocations should therefore not be based on need but ability to benefit the Canadian broadcasting system. Funding PNI and children's series and movies of the week would bring in many additional hours of television to the system, strengthen the talent pool and the independent production community and allow more of Canada's talented screenwriters to stay in Canada for their careers.

Incrementality

33. Generally, measurement of the incrementality of benefits is fairly straightforward. Purchasers are required to ensure that benefits money is on top of what they would have already spent. Under the Group Licence Policy, that means on top of their CPE and PNI requirements. However, there is an added twist here in that on the one hand BCE is proposing not to combine the CPE and PNI of the BCE and Astral corporate groups but on the other hand is proposing to spread the spending of the benefits throughout the new combined company as and where it deems appropriate. BCE has not made any proposal on how to measure incrementality. As there appears to be room for intentional or unintentional double counting with two CPEs and PNIs, we request that the Commission ask BCE for a specific proposal for clear measurement of incrementality.

Term

34. BCE has proposed spending the benefits package over an unprecedented ten year term. The Commission requested that BCE file as well a proposed seven year term. The WGC respectfully suggests that a five year term would be more appropriate as it would be consistent with the term of the broadcast licence. If the Commission does not agree, the WGC could support a seven year term but we do not see any extenuating circumstances which would justify a ten year term. Further, consistent with past practice, the WGC requests that the proposed schedule be adjusted so that the “Other PNI” payments are not backended but paid out equally over the term. The Commission has required equal annual payments from broadcasters for the past few years after several benefits packages went unpaid. As a result, we notice from annual benefits reports that most of the broadcasters associated with the recent packages have been spending benefits in roughly equal instalments and the broadcasting system has been benefitting. It is noticeable however that under the previous policy that did not require a payment schedule, it took BCE several years longer than the allowed term to spend all of the BCE-CTV 2000 benefits package. Broadcasters will take every opportunity that they can to avoid or delay paying benefits. Only a requirement for equal annual payments can ensure that benefits are actually spent and prevent claims for ‘relief’.

Conclusion

35. We respectfully request that the Commission err on the side of the Canadian broadcasting system when reviewing this transaction. Consolidation may be good for business but it limits creative opportunities and choices. This transaction will result in significant media consolidation that has the potential to reduce the diversity of creative voices on the Canadian broadcasting system, particularly in the areas of edge adult drama and tween programming. A strong Canadian broadcasting system needs both strong broadcasters but also a vibrant and diverse talent pool in order to survive. For that reason we have asked the Commission to ensure that the valuation is fair and to reallocate the benefits package to be consistent with Commission policy and precedent. Specifically we ask that the Commission:

    a. Disallow the Northwestel Digital Future allocation
    b. Disallow the Mental Health Initiative
    c. Characterize Film Festivals as a social benefit
    d. Ensure that the allocation to Children’s and Youth Programming and to Other PNI accommodates financing for development
    e. Reallocate the English-language portion of disallowed benefits and any additional benefits from increased valuations to Children’s and Youth programming and Other PNI, subject to a maximum of 15% of benefits which may be allocated to social benefits
    f. Limit the term to five years and to be paid out equally over the term.

36. We thank you for this opportunity to provide you with our comments.

Yours very truly,

Maureen Parker
Executive Director

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