



5 April 2006

Ms. Diane Rhéaume
Secretary-General
Canadian Radio-Television &
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume:

Re: *Application by Bell Globemedia Inc. (BGM), on behalf of its licensed broadcasting undertakings, seeking authority to change its effective control in accordance with section 14(4) of the Television Broadcasting Regulations, 1987 and section 10(4) of the Specialty Services Regulations, 1990, Broadcasting Public Notice CRTC 2006-24, 1 March 2006*

A. Introduction & Executive Summary

1. This is the intervention of the Directors Guild of Canada (DGC), the Writers Guild of Canada (WGC), and the Alliance of Canadian Cinema, Television & Radio Artists (ACTRA) (the Unions) on the application by Bell Globemedia Inc. (BGM) seeking approval of a transaction which would significantly modify the ownership structure of BGM and result in a change in and transfer of effective control of BGM. For reasons outlined in greater detail below, the Unions oppose this application in its current form as it is deficient with respect to the payment of transfer benefits. The Unions do not oppose the BGM application if benefits in the amount of 10% of the value of the transaction are paid for the benefit of the Canadian broadcasting system, Canadian cultural expression and Canadian citizens.
2. The DGC is a national labour organisation representing key creative and logistical personnel in the motion picture industry. Founded in 1962, today it represents over 3,800 members in 48 different craft and occupational categories covering all areas of filmmaking: direction, production, editing and design. The WGC is the national association representing 1,800 screenwriters working in English-language film, television, radio and multimedia production in Canada. And, the Alliance of Canadian Cinema,



Television and Radio Artists (ACTRA) is a national organization of professional performers working in the English-language recorded media, representing the interests of 21,000 members across Canada.

3. BGM has applied to the Commission for approval of a complex transaction that will result in the transfer of ownership and change of control of BGM. BGM argues in its application that no benefits should flow to the Canadian broadcasting system as a result of this transaction. It states repeatedly throughout its application that while this transaction will result in a “change” of effective control, it will not result in a “transfer” of effective control or legal control of BGM, as no one shareholder will be acquiring legal or effective control of BGM. Consequently, BGM maintains that no benefits are payable to the system pursuant to the 1999 Television Policy set out in *Building on Success – A Policy Framework for Canadian Television*, Public Notice CRTC 1999-97, 11 June 1997.
4. Upon a close review and analysis of the BGM application, the Unions do not agree with BGM’s position. Our analysis indicates that a “transfer” (and “change”) of control will indeed occur should the Commission approve this application. As we discuss in greater detail below, it is our submission that The Woodbridge Company (Woodbridge) will gain effective control of BGM upon the completion of this transaction. Consequently transfer benefits should be paid to the Canadian broadcasting system.
5. BGM claims that the Commission’s Benefits Policy only applies if there is a “transfer” of effective control, not a “change” of effective control. The Unions do not agree. As we also discuss in further detail below, the Commission’s Benefits Policy applies to “changes” or “transfers” of ownership or effective control, and is not contingent on which word is used to characterize a transaction. This is clear from numerous Commission statements regarding the Benefits Policy. It is also illustrated unambiguously in Broadcasting Decision CRTC 90-630, 8 July 1990, where benefits were payable when there was a loss of effective control by one shareholder, with no single shareholder gaining effective control as a result of the transaction.
6. The Benefits Policy should also apply in the case at hand given the increased interests that three shareholders will enjoy, the magnitude of the transaction, and the broadcaster in question (i.e., Canada’s largest private broadcaster).
7. The Unions also submit that if the Commission were to accept the arguments of BGM, this would set a dangerous precedent since it would effectively open the door to a multi-staged approach to the transfer of ownership and control of broadcasting undertakings. Specifically, if BGM’s position were correct, parties could divide a transaction into stages



and only at the final stage, when a new controlling shareholder would appear, would benefits be payable. The benefits payable on that final stage would, of course, be only a small percentage of the benefits which would have been payable if the transaction had taken place in a single step. In the Unions' submission, this kind of opportunity for "gaming" the system demonstrates clearly that BGM's position cannot be correct. The Commission surely did not intend to create such an enormous loophole in the broadcast regulatory regime when it created its Benefits Policy.

8. Finally, in this intervention, the Unions take issue with the proposed value of the BGM transaction. The applicant maintains that the value of this transaction is \$685,195,257. However, it is the Unions' position that when all of the elements of the transaction are taken into account, it would be appropriate and equitable for the Commission to apply a gross-up factor of 25% or greater so as to properly reflect the true value of the transaction.
9. If the Commission accepts BGM's proposed value of the transaction, the benefits that should flow to the system are \$68.1 million. This is a significant amount of money that is very much needed to support the development and creation of high quality Canadian programming, and in particular original Canadian dramatic programming. As the Commission is aware, Canadian drama is the backbone of the Canadian broadcasting system, and transfer benefits are one of the key forms of regulatory support for this type of programming.
10. BGM should not be excused from the application of the Commission's Benefits Policy as there is no public policy or rationale for doing so. We begin our intervention by briefly outlining the BGM application.

B. The Application

11. BGM owns and controls CTV Inc., which is the largest private broadcaster in Canada. BGM, in turn, is owned by BCE Inc. (BCE) and Woodbridge. BCE owns 2,740,000,000 Class A common shares representing 68.5% of the voting interest in BGM. Woodbridge owns, directly and through a wholly-owned subsidiary, 1,260,000,000 Class A common shares representing 31.5% of the voting interest in BGM.
12. BGM is applying for approval of a complex transaction which involves four key elements.



13. First, under section 2.1 of the Recapitalization Agreement, BGM incurs new debt which is used, in part, to reduce the stated capital of the Class A common shares of BGM and to return a total of \$886,496,350 to BCE and Woodbridge (the Return of Capital Payments).
14. Second, under section 2.2 of the Recapitalization Agreement, BCE transfers a total of 1,940,000,000 Class A common shares (representing 48.5% of the outstanding Class A common shares of BGM) to Woodbridge, Ontario Teachers' Pension Plan Board (Teachers) and Torstar Corporation (Torstar). Woodbridge acquires 340,000,000 shares, and Teachers and Torstar each acquire 800,000,000 shares, resulting in the following distribution of Class A common shares: Woodbridge 40%, BCE 20%, Teachers 20% and Torstar 20%.
15. In total, the shares transferred under section 2.2 of the Recapitalization Agreements are valued at \$685,195,257. Assuming this valuation is correct, then prior to the distribution of the Return of Capital Payments made under section 2.1 of the Recapitalization Agreement, the 48.5% of the Class A common shares of BGM to be transferred by BCE under the agreement would have been valued at \$1,115,145,987.
16. Third, Woodbridge, BCE, Teachers and Torstar enter into the Unanimous Shareholder Agreement (the USA).
17. Fourth, BCE and BGM enter into the Commercial Arrangements Framework Agreement (the Framework Agreement).

C. Effective Control

18. BGM argues in its application that under the proposed transaction BCE would lose effective control of BGM and that there would be no controlling shareholder when the transaction is completed. At page 2 of its Supplementary Brief, BGM states:

"Following the transactions, the Company will have no controlling shareholder. The business and affairs of the Company will be managed by the Board of Directors and no shareholder will have legal or effective control of the Company or its Board."
19. In the Unions' submission, a review of the elements of the transaction reveals that the situation is not nearly as simple as suggested by BGM.
20. As the Commission has stated on numerous occasions, an assessment of whether a person has effective control of a corporation requires consideration of a wide range of factors,



not merely the allocation of voting interests. When all of the relevant features of BGM's proposed transaction are considered, it is apparent that, at a minimum, Woodbridge has negative control over BGM. In the Unions' submission, Woodbridge's level of influence over BGM should be construed as granting it effective control.

21. The scope and basis of Woodbridge's influence over the affairs of BGM is discussed in the following sections.

The Board of Directors

22. If approved by the Commission, upon completion of the transaction Woodbridge will have 40% of the voting shares of BGM. While Woodbridge is restricted by the USA to nominating two directors to BGM's Board of eight directors, one of those directors is the Chairman. This follows from the fact that Woodbridge is the only shareholder with at least 30% of the outstanding shares, the threshold necessary for nominating the Chairman according to section 2.17 of the USA.
23. Under section 2.7.3 of the USA, the Chairman is responsible for nominating the two independent members of the Board. Given that Woodbridge nominates the Chairman, this provides Woodbridge with direct control or significant influence over the selection of four of the eight directors (i.e., its two direct nominees and the two independent directors nominated by the Chairman, a Woodbridge nominee). On this basis, Woodbridge can be viewed as having negative control of the Board (i.e., the ability to stalemate the Board).
24. Furthermore, sections 2.7.1 and 2.7.4 of the USA indicate that the Chief Executive Officer (CEO) of BGM is a member of the Board. However, Woodbridge has a veto over the appointment or removal of the CEO since, under section 2.28 of the USA, any such change requires prior consent of shareholders holding at least 66 2/3% of the voting shares. This means that Woodbridge has negative control over the selection of a fifth member of the Board of Directors, the CEO.
25. Overall, Woodbridge (a) can appoint two directors, including the Chairman, (b) has a significant influence, via the Chairman, over the appointment of the two independent members of the Board, and (c) has negative control over the appointment of a fifth member of the Board, the CEO. In other words, five of the eight directors can reasonably be viewed as being, directly or indirectly, Woodbridge nominees. The Unions also note that under section 2.15 of the USA, motions of the Board are carried by a majority vote, which amounts to five Directors.



26. In the Unions' submission, at a minimum, this arrangement grants Woodbridge negative control over the selection of the Board of Directors. The Unions believe this should be viewed as granting Woodbridge effective control of the Board.

The CEO

27. As noted above, section 2.28 of the USA gives Woodbridge a veto over the appointment or removal of the CEO.

28. The Commission has noted on numerous occasions that control or significant influence over the CEO position is an important factor to be considered when assessing whether a person has effective control of a corporation: see, for example, Decision CRTC 1998-173, 23 June 1998, as well as *In the Matter of Unitel's Eligibility to Operate in Canada as a Telecommunications Carrier Pursuant to Section 16 of the Telecommunications Act*, Decision CRTC 8992-A4-01/96, 16 October 1996.

29. In the Unions' submission, Woodbridge's negative control over the appointment or removal of the CEO of BMG contributes significantly to its influence over the corporation.

Senior Management

30. Section 2.23 of the USA provides that the Board of Directors has the authority to appoint the senior management of BGM, subject to the restrictions on the appointment of the CEO.

31. Given that Woodbridge has either negative control or effective control of the Board of Directors, this means that Woodbridge has either negative control or effective control over the appointment of senior management. Once again, this represents a very significant level of influence over the affairs of BGM.

Other Fundamental Changes

32. Pursuant to section 2.28 of the USA, Woodbridge, and only Woodbridge, has a veto over a number of other fundamental changes, such as changes to the articles of incorporation, which may be inconsistent with the USA.

33. The fact that Woodbridge is the only shareholder with negative control over the fundamental changes identified in section 2.28 provides further evidence of the degree of influence and control Woodbridge enjoys over BGM.



Business Plan and Budget

34. Section 2.31 of the USA requires the management of BGM to prepare an annual business plan and budget and submit it to the Board of Directors for approval. Unless and until the Board approves the new business plan and budget, the previous year's business plan and budget apply.
35. Given Woodbridge's control over the appointment of the CEO and senior management and its control over the Board, it is clear that Woodbridge has control over BGM's annual business plan and budget. This provides further support for the view that Woodbridge has effective control over BGM.

Quorum

36. Under Section 2.14 of the USA, at least one Woodbridge director must be present in order for there to be a quorum of the Board of Directors. While Section 2.14 includes a saving clause, Woodbridge is the only shareholder with this right, which, in effect, enables Woodbridge to unilaterally postpone meetings of the Board of Directors. This provision is another example of the special degree of influence Woodbridge has over the affairs of BGM.

Summary Regarding Effective Control

37. The question of effective control is not resolved by simply counting voting shares. It is necessary to consider numerous other factors in order to assess whether a person has a degree of influence over the affairs of the corporation sufficient to give that person effective control.
38. Woodbridge has direct or indirect control over the selection of five of the eight directors on the Board of Directors. Woodbridge also has a veto over the appointment of the CEO, as well as in respect of a number of other fundamental changes. Through its control of the Board, Woodbridge also has control over the selection of senior management of BGM and the approval of the annual business plan and budget. Woodbridge is also the only shareholder with the right to unilaterally postpone meetings of the Board of Directors. In the Unions' submission, when all of these factors are considered, it is evident that under the proposed arrangements Woodbridge will gain effective control of BGM.



D. The Benefits Policy

Interpretation of "Transfer" and "Change" of Effective Control

39. As stated, BGM takes the position that benefits are not payable under the proposed transaction because it involves a change of control, but not a transfer of control. BGM's position is stated most clearly in its 29 December 2005 letter responding to deficiency questions from the Commission, where BGM states, at Question 19:

"Pursuant to the Commission's benefits policy, an applicant is required to propose tangible benefits upon the "transfer" of ownership or effective control of broadcasting undertakings. The current transaction does not entail a transfer of ownership or effective control of the Company or its licensees to any Shareholder or new entity.

As set out in the Application, the transactions for which prior approval is sought will result in a "change" of effective control of the Company, in that BCE will no longer be the controlling shareholder of BGM, but no new entity or Shareholder will be acquiring legal or effective control of the Company."

40. With all due respect, BGM's exceedingly narrow interpretation of the Commission's Benefits Policy is not correct.

41. The starting point for an understanding of the Commission's Benefits Policy is the fact that a broadcasting licence is a privilege, not a right. A broadcasting licence is granted to a particular licensee based on specific circumstances relating to the ownership and control of the licensee. A licensee can only make a change in its ownership and control arrangements in accordance with the conditions established by the Commission.

42. In *Applications for authority to transfer effective control of Télé-Métropole to Power Corporation of Canada*, Decision 86-367, 18 April 1986 (Decision 86-367), the Commission set out the basic rationale for requiring an applicant seeking approval of a change in its ownership and control arrangements to propose a package of tangible benefits:

"As the Commission does not solicit applications *for transfers of ownership or control* of broadcasting undertakings, it considers it to be the sole responsibility of the applicant requesting such transfer to demonstrate to the Commission that the application as filed is the best possible proposal under the circumstances, taking



into account the Commission's general concerns with respect to transactions of this nature. In this regard, the Commission has developed general policy guidelines for disposing of applications *for changes of ownership or effective control* of all classes of broadcasting undertakings.

The first test any applicant must meet is that the proposed *transfer of ownership or control* yield significant and unequivocal benefits to the communities served by the broadcasting undertakings, to the Canadian broadcasting system as a whole, and that it is in the public interest." [Emphasis added]

43. This passage has been cited on numerous occasions by the Commission, most notably in *Assessment of the impact of the Benefits test Applied at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1992-42, 15 June 1992, which provides a succinct history of the Benefits Policy, and continues to apply today. The above-mentioned language was also echoed in the 1999 Television Policy at paragraphs 22 and 24.
44. It is evident from the Commission's comments in Decision 86-367, mentioned above, that the type of distinction BGM seeks to draw between "changes" and "transfers" of ownership or control has no merit. The Commission's concern is clearly with the ownership and control arrangements before the proposed transaction and the ownership and control arrangements after the proposed transaction. It makes no difference whatsoever whether the transformation from the first to the second state is called a "transfer" or a "change".¹
45. The validity of this interpretation is demonstrated by Broadcasting Decision CRTC 90-630, 6 July 1990, where benefits were payable in connection with a transaction involving

¹ The Unions note that in PN 1999-97 at paragraphs 24 and 25 the Commission also uses the words "change" and "transfer" interchangeably:

24. The Commission generally expects significant benefits to be offered to the community in question, and to the Canadian broadcasting system as a whole, when considering applications to **transfer** ownership or control of a television undertaking. Because the Commission does not solicit competing applications, the onus is on the applicant to demonstrate that the application is the best possible under the circumstances and that the benefits proposed in the application are commensurate with the size and the nature of the transaction.

25. In the Commission's view, the absence of a competitive process for **changes** to the ownership or control of programming undertakings makes the benefits test an appropriate mechanism for ensuring that the public interest is served. [Emphasis added]



Telelatino Network Inc. (Telelatino). As a result of a corporate restructuring and recapitalization, effective control of Telelatino passed from a Mr. Mascia to the licensee's Board of Directors. There was a clear change of control, although not a transfer of control from one shareholder to another. Tangible benefits in the amount of \$3,277,000 over a five-year period were payable to the Canadian broadcasting system pursuant to that decision.

46. Overall, nothing can or should turn on whether the word "transfer" or "change" is used in connection with BGM's application. It is evident that BGM's proposed transaction involves a "transfer" of ownership interests (i.e., 48.5% of the Class A common shares) from BCE to Woodbridge, Teachers and Torstar. This could also be described as a "change" of ownership since the allocation of ownership interests changes, including the introduction of two new owners: Teachers and Torstar. For the purposes of the Benefits Policy, no weight should be given to which word – "change" or "transfer" – is used.
47. Similarly, under the proposed transaction, there is a "change" of control since BCE ceases to be the controlling shareholder and Woodbridge acquires effective control. This could also be described as a "transfer" of control. Once again, for the purposes of the Benefits Policy, nothing turns on which word is used.
48. The important point under the Benefits Policy is not whether the proposed transaction can best be described as involving a "transfer" or a "change". The important point is whether the ownership and control arrangements after the proposed transaction would be sufficiently different from the ownership and control arrangements before the transaction as to require prior Commission approval. As expressly acknowledged by BGM in its application, this is the case with respect to BGM's proposed transaction.

Benefits are Payable in the Case at Hand

49. Given that prior Commission approval for the transaction is required, the focus under the Benefits Policy is to ensure that the shift from the first ownership and control arrangement to the second arrangement yields "significant and unequivocal benefits". In the Unions' submission, such an assessment is especially warranted in the present circumstances for three reasons.
50. First, as discussed in detail above, Woodbridge would acquire effective control of BGM under the proposed transaction. There is no policy reason for permitting Woodbridge to enhance its ownership interest and gain effective control of BGM without meeting the requirement to provide tangible benefits in accordance with the Benefits Policy.



51. Second, the proposed transaction would permit Teachers and Torstar to each obtain a significant ownership interest in Canada's largest private broadcaster. The Unions note at pages 1 and 4 of BGM's Supplementary Brief it states that:

"[Woodbridge] will be joined as shareholders of BGM by two new Canadian shareholders – Ontario Teachers' Pension Plan Board ("Teachers") and Torstar Corporation ("Torstar") – enabling these new shareholders to play an important role in the Canadian broadcasting system for the first time." (p.1) [Emphasis added]

"Torstar's investment in BGM will give Torstar substantial exposure to conventional and specialty television in Canada and will strengthen Torstar's position as a diversified media company." (p.4)

52. Further, under the Recapitalization Agreement, Teachers and Torstar would each pay \$282,554,745 to BCE. The Unions are not aware of any transaction where a person has paid a comparable sum to acquire an ownership interest in a broadcasting undertaking without satisfying the requirements of the Benefits Policy.² There is no policy reason why either Teachers or Torstar should be permitted to obtain a significant ownership interest in such a wide range of programming undertakings without providing tangible benefits in accordance with the Benefits Policy.

53. Third, BGM controls CTV Inc., the largest private broadcaster in Canada. The proposed transaction is valued, at a minimum, at \$685,195,257 and involves ownership interests relating to over 40 broadcasting licences. Regarding the size and strength of CTV Inc., BGM stated the following at pages 1 and 2 of its Supplementary Brief:

"Over time, with Commission approval, CTV has evolved from a network of affiliated stations with several ownership groups to one of Canada's largest private broadcasters. BGM also owns and controls a number of specialty television networks, including TSN, RDS, Discovery Channel, the Comedy Network, ROBTv and CTV Newsnet."

² It should be noted that less than a year ago, the Commission approved the transfer of effective control of Craig Media Inc. to CHUM Limited. That transaction was valued at \$219 million, a third of the value of the BGM transaction currently before the Commission. The benefits to be paid to the system amounted to \$21.9 million.



54. The Unions also note that CTV is currently one of the most successful broadcasters in Canada. The very recent release of the Commission's *Statistical and Financial Summaries* for Television indicated that overall, Canadian television broadcasters have remained profitable and have posted increased revenues and profits during the last broadcast year. In this regard, the *Globe & Mail* reported the following on 20 March 2006, with respect to CTV:

"...industry sources say that one of the three major networks – CTV – is responsible for the vast majority of the revenues growth, as the network continues to dominate the top 20 ratings lists and attract advertising dollars.

According to the most recent ratings survey from Nielsen Media Research for the period March 13-19, CTV broadcast 16 of the top 20 programs in Canada..." (p. B6)

55. Further, a transaction of this magnitude affects a major portion of the private broadcasting industry and, hence, the Canadian broadcasting system. There is no policy reason for permitting a transaction of this scale and scope to proceed without ensuring that it will provide tangible benefits to the Canadian broadcasting system in accordance with the Benefits Policy.
56. In summary, BGM's argument that the Benefits Policy does not apply has no merit. The proposed transaction involves a significant change in the ownership and control of BGM requiring prior Commission approval. The Benefits Policy therefore applies.
57. Moreover, there is no policy reason why the Benefits Policy should not be applied in its standard form. In particular, there are no extenuating circumstances, which would warrant granting an exemption from the policy's requirement that a proposed transaction provide tangible benefits equivalent in value to 10% of the total value of the transaction. The proposed transaction involves Canada's largest private broadcaster and four financially strong Canadian entities. A benefits package in accordance with the Benefits Policy is required.

Additional Benefits Payable when Benefits Under Previous Transaction Outstanding

58. At page 19 of BGM's Supplementary Brief (and page 20 of BGM's response to CRTC deficiency questions), the applicant states that, "to our knowledge, the CRTC has never required additional benefits from shareholders who are already participating in the payment of a benefits package with respect to the same broadcast undertakings..."



59. Despite this assertion by BGM, it is clear that Commission policy requires benefits to be paid in situations where outstanding benefits from a previous transaction have not yet been paid. In this regard, the Commission stated the following in Public Notice CRTC 1993-68, 26 May 1993:

"The Commission currently expects the purchaser of an undertaking to fulfil any benefits commitments that the current licensee of the undertaking has not fulfilled. The Commission considers that benefits commitments are part of the obligations of a licensee and should be implemented regardless of ownership changes. The Commission will therefore maintain its practice of questioning the prospective purchaser in a transaction on its intentions with respect to the seller's unfulfilled benefits commitments. The Commission notes that commitments to carry out such unfulfilled benefits are not considered to be benefits on the part of the purchaser." [Emphasis added]

60. This CRTC policy was confirmed in Public Notice CRTC 1999-97. There is no mention in either of these documents that transfer benefits are not payable on a transaction when a shareholder is already participating in the payment of a benefits package.
61. The Unions also note that in *Licence Renewal for CFCF-TV*, Decision CRTC 2002-390, 29 November 2002, the Commission confirmed that the licensee was required to assume responsibility for tangible benefits amounting to \$800,000 that were approved when WIC Television purchased a controlling interest in CFCF-TV in 1997. The Commission ordered the payment of the outstanding WIC transfer benefits despite the fact that new benefits were payable under *Transfer of Effective Control of CTV Inc. to BCE Inc.*, Decision CRTC 2000-747, 7 December 2000.
62. To accept BGM's argument in this regard would open the door for other applicants to apply to the Commission to be excused from having to pay crucial transfer benefits to the Canadian broadcasting system simply by attracting a new shareholder to a transaction where outstanding benefits from a previous transaction have not yet been fully paid. This BGM argument is contrary to the letter and spirit of the Commission's Benefits Policy and should be rejected.

E. Approval of BGM Application Would Create a Dangerous Precedent

63. In addition to the arguments provided above, the Unions note that approval of this transaction on the terms proposed by BGM would open the door to other applicants to



use a multi-stage approach to the transfer of ownership and control of a broadcasting undertaking in order to minimize the benefits payable under the Benefits Policy. By breaking a transaction into stages, which would take place over time, parties could create a situation whereby benefits would only be payable on the final stage of the transaction (i.e., when a single shareholder gains effective control). The value of this final stage might be a small percentage of the overall value of the transaction and, therefore, the tangible benefits payable under the Benefits Policy would also be a small percentage of the benefits which would be payable if the transaction were viewed in its entirety.

64. In the Unions' submission, this multi-stage evasion of the Benefits Policy would be a natural consequence if BGM's position were correct. There is no reason to believe that the Commission created such an enormous loophole within the Canadian broadcast regulatory system when it developed its Benefits Policy more than 20 years ago. If BGM were correct and such a loophole did exist, millions of dollars in tangible benefits could be lost for the support of Canadian programming and Canadian cultural expression. This could not have been and cannot now be the Commission's intention with respect to its Benefits Policy, especially today, when funds are extremely limited for the support and development of Canadian programming.

F. The Value of the Transaction

65. The BGM Class A common shares to be transferred under the proposed transaction are valued at \$685,195,257 in the Recapitalization Agreement. As noted in Section B, assuming this valuation of the shares is correct, then, prior to the distribution of the Return of Capital Payments, these same shares would have been valued at \$1,115,145,987.
66. The Unions recognize that BGM may be entitled at law to make the Return of Capital Payments. The Unions also recognize that this aspect of the overall transaction has the effect of lowering the valuation of the shares transferred under the Recapitalization Agreement and, hence, on its face, lowers the level of benefits, which must be provided under the Benefits Policy.
67. In the Unions' submission, it would be appropriate for the Commission to take the effect of the Return of Capital Payments into consideration when assessing the tangible benefits required under the Benefits Policy. In particular, the Unions submit that the valuation of the transaction should include a gross-up factor reflecting the enhanced value of the transaction to BCE as a result of the Return of Capital Payments since these payments are an integral part of the Recapitalization Agreement. The Unions note that a gross-up



factor of 63% would fully address this aspect of the transaction (i.e. value of the transferred shares at their value prior to the Return of Capital Payments).

68. The Unions also believe it would be appropriate for the Commission to consider the benefit to BCE associated with the Framework Agreement. This aspect of the transaction would have the effect of constraining the commercial freedom of BGM, solely to the benefit of BCE. In the Unions' submission, this aspect of the transaction has a significant value to BCE and should be reflected in the valuation of the overall transaction for the purposes of the Benefits Policy.
69. In summary, the \$685,195,257 valuation of the 1,940,000,000 Class A common shares to be transferred under the Recapitalization Agreement represents the absolute minimum value of the transaction. In the Unions' submission, the Commission should also take into account the benefit to BCE of the Return of Capital Payments and of the Framework Agreement when determining the valuation of the overall transaction for the purposes of the Benefits Policy.
70. The Unions acknowledge that the precise level of such a gross-up cannot be determined on a simple arithmetical basis, but must necessarily entail the exercise of judgment by the Commission. In the Unions' submission, a gross-up factor of 25% or greater would be appropriate and in the public interest in order to take into account the two elements of the transaction discussed above.

G. Benefits to be Paid – A Proposed Benefits Package

71. In its deficiency questions, the Commission asked Bell Globemedia to outline a proposal for the expenditure of benefits worth 10% of the value of the proposed transaction. Bell Globemedia declined to submit such a proposal, holding to its position that the Commission's benefits policy does not apply to the current transaction. However, as mentioned, the Unions are of the view the benefits are indeed payable in this instance and propose the following general breakdown for tangible benefits spending arising out of this transfer of ownership and control.
72. In our view, at least 60% of the total benefits arising out of this transaction should be directed to the production of original priority programming. The Unions also propose that all of the priority programming portion of the benefits package should be directed toward original drama production. Drama productions are the most expensive types of programs to produce and are also in significant need of financial support within our system.



73. As the Commission is aware, transfer benefits have played a significant role in supporting Canadian dramatic productions over the past seven years. In particular, the benefits payable under the BCE/CTV transfer of 2000 (Decision CRTC 2000-747) have contributed to the support of a number of high quality Canadian dramatic productions, such as *Corner Gas*, *Degrassi: the Next Generation*, and *Hunt for Justice: The Louise Arbour Story*.
74. Further, the Unions propose that 10% of the benefits package fund drama script and concept development. It is crucial that meaningful support be directed to the development of Canadian productions at the early stages of their creation to jump-start quality Canadian productions.
75. We further propose that a minimum of 95% of the priority programming benefits should go toward independent production. Benefits expenditures should be made in roughly equal parts over the years of the benefits period, and not disbursed mainly in the final years that payments are required to be made.
76. As it has consistently done in the past, the Commission should require that such benefit expenditures be truly incremental to current expenditures and that they flow predominantly to independent production. Finally, the Commission should impose sufficiently rigorous reporting requirements in order to ensure that the applicant will demonstrate on an annual basis that its benefits expenditures fulfill all of the Commission's requirements.
77. While the Unions have set out a general benefits proposal in the preceding paragraphs, they also note that if the Commission requires BGM to pay benefits in the case at hand, the Unions reserve the right to review and comment on BGM's proposed benefits package.

H. Conclusion

78. BGM is seeking Commission approval of a major transaction modifying the ownership and control of Canada's largest private broadcast. The Unions oppose BGM's application in its current form due to BGM's claim that the Commission's Benefits Policy does not apply to the proposed application.
79. BGM's argument that the Benefits Policy does not apply is wrong for two reasons.



80. First, contrary to BGM's claim, the transaction would not leave BGM without a controlling shareholder. The analysis in Section C above demonstrates that Woodbridge would gain effective control of BGM.
81. Second, independent of the issue of effective control, BGM's argument that the Benefits Policy applies only to "transfers" of ownership and control and not to "changes" in ownership and control has no merit whatsoever. The Commission's previous decisions and policy statements make it abundantly clear that BGM is advancing a distinction, which has never been made by the Commission.
82. The proposed transaction involves a modification in the ownership and control arrangements of BGM of such a nature as to require prior Commission approval. Consequently, the Commission's Benefits Policy is triggered, and an assessment of the appropriate package of tangible benefits is required.
83. Given the nature and magnitude of the transaction, as well as the parties involved, there are no policy reasons which would warrant exempting the proposed transaction from the standard requirement that tangible benefits equivalent to 10% of the transaction's value be provided.
84. Finally, when assessing the value of the transaction, the benefit to BCE of the Return of Capital Payments and of the Framework Agreement must be considered. In the Unions' submission, a gross-up factor of 25% or greater should be applied to the \$685,195,257 valuation of the 1,940,000,000 Class A common shares to be transferred under the Recapitalization Agreement.
85. It is appropriate to apply the Commission's Benefits Policy to the proposed transaction, and there is no financial reason to exempt the parties from their responsibilities in this respect. The Benefits Policy has been beneficial for the Canadian broadcasting system, particularly through bringing crucial resources to support original drama production. The tangible benefits arising from the current transaction can also play a significant role in supporting Canadian drama in the future.



86. The Unions appreciate the opportunity to provide the Commission with these comments in respect of this extremely important transaction involving Canada's largest private broadcaster.

Yours truly,

A handwritten signature in black ink that reads "Pamela Brand".

Pamela Brand
National Executive Director
Directors Guild of Canada

A handwritten signature in black ink that reads "Maureen Parker".

Maureen Parker
National Executive Director
Writers Guild of Canada

A handwritten signature in black ink that reads "Steve Waddell".

Steve Waddell
National Executive Director
ACTRA

cc: Bell Globemedia Inc.
9 Channel Nine Court
Toronto, ON M1S 4B5
Fax: (416) 332-4580
E-mail: dspodek@ctv.ca