



August 4, 2011

Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Submitted via E-Pass

Dear Mr. Morin,

Re: Broadcasting Notice of Consultation CRTC 2011-408 (the “Notice”) – Application by Glassbox Television Inc. (“Glassbox”) for the authority to transfer effective control to Blue Ant Media Inc (“Blue Ant”).

1. The Writers Guild of Canada (the WGC) is the national association representing more than 2000 professional screenwriters working in English-language film, television, radio and digital media production in Canada. The WGC is actively involved in maintaining a strong and vibrant Canadian broadcasting system containing high quality Canadian programming. The WGC wishes to **support** Glassbox’s application subject to issues raised in this intervention.
2. This transaction represents a number of positive intangible benefits—chief among them is the return of Michael MacMillan and Seaton McLean to Canadian broadcasting. Their deep experience leading Atlantis Films and Alliance Atlantis Communications Inc. bodes well for the continued viability of an independent broadcaster such as Glassbox. Given the trend towards vertical integration, the presence of successful independent broadcasters is integral to maintaining a healthy, balanced system with a diverse range of stakeholders.
3. Regarding tangible benefits, the WGC welcomes the \$1 million investment in Canadian programming that stems from the valuation of AUX TV (AUX) and BITE TV (BITE). We are also encouraged by Glassbox’s assurance that it intends to make scheduled payments of these benefits. However, we are concerned about the request to defer these benefits for one year. Glassbox argues that it needs the time to factor in the Commission’s group-based licence

4. decision as it pertains to expenditure requirements for Category B services. AUX and BITE, which belong to this category, do not have Canadian Programming Expenditure (CPE) requirements. To ensure that tangible benefits spending is incremental, Glassbox must find a way to measure ordinary spending levels.
5. We accept that the existing method of calculation, which is based on the average amount spent on Canadian content programming over the previous three years, is quite onerous for these relatively new services. According to Glassbox's Supplementary Brief, this results in a CPE for BITE of 87%. For AUX, which only has one year of revenues on which to base calculations, the CPE would be 430%. By contrast, the spending requirement for most Category B services which have CPEs is 16%.
6. The WGC appreciates the issues of measuring incrementality in these circumstances. However, this is not a strong enough reason to delay the start of benefits spending. There are other approaches to arrive at an acceptable means of measurement that would allow the benefits to flow to incremental Canadian programming within an appropriate time frame. For instance, the Commission could use the past dollar expenditure as the baseline. Or it could set a fair CPE, taking into consideration the financial circumstances of AUX and BITE and as well the CPEs of other Category B services. As such, we respectfully recommend that the Commission not grant the one-year deferral on the start of benefits but instead set a measurement of incrementality that it finds suitable.
7. Given that a deferral is unnecessary, we would like to point out that this request represents an unsettling trend among broadcasters regardless of size or years of operation. For various reasons, they have been seeking exemption from their obligations at the application stage or delaying the start of spending indefinitely after the fact. They have argued that the Commission's case-by-case approach is intended to allow such flexibility. We find that 'flexibility' is becoming code for 'we don't want to do it'. The Tangible Benefits Policy is designed to ensure that transactions benefit the system as a whole and not solely the parties of these transactions. Broadcasters are expected to file their best possible proposal as the Commission does not solicit competing applications. Delaying the payment of tangible benefits adds uncertainty to the business of creating Canadian programming, as the monies are not spread out evenly over the course of the licence term.
8. We also expect the Commission to consistently apply the Tangible Benefits Policy to travel + escape, should it determine that additional benefits are payable. Glassbox proposes that if it is required to pay benefits on travel + escape it would direct half the benefits to in-house production. We would like to emphasize that the objective of the Tangible Benefits Policy is to benefit the entire system and that is most easily done through funding independent production rather than funding a broadcaster's own activities. Glassbox accepted this policy in relation to last year's travel + escape transaction. We see no reason to ignore this principle now.

9. The WGC also has concerns about the request to shift benefits between new media (i.e. unregulated platforms) and regulated platforms as creative opportunities and market conditions arise. Glassbox points out that the Commission did not restrict how funds should be spent across platforms when it approved the 2010 purchase of travel + escape and the creation of the GlassBOX Multiscreen Fund. The broadcaster argues that this approach is appropriate given its potential to positively impact the system with its new media expertise.
10. The WGC is highly supportive of new media content that is associated with scripted programming. As well, we also support an adaptive broadcasting system that reflects the evolving multiscreen environment. Yet, it is equally important that the system continues to emphasize its regulated services which have obligations above and beyond unregulated services. While new media broadcasting is a growth area, the greatest audiences are still watching traditional television. We respectfully submit, that regardless of any prior exception made for travel + escape, the Commission should continue to consistently apply the policy limiting the allocation of benefits to new media. We recommend that no more than 50% of funds be directed towards these services. This strikes a balance between the need to develop new media and the commitment to the regulated space.
11. We also encourage the Commission to maintain the policy of placing a spending cap on standalone new media projects which requires 10% of tangible benefits to go to on-screen benefits. Glassbox has requested the removal of this cap because none exists for new media projects that are linked to television programs. Glassbox explains that unlike traditional broadcasters such as Bell Media, its experience lies in new media and over-the-top services. As such, it does not have an extensive array of television programming to attach new media projects. While Glassbox makes a good point, there is value in the Commission's policy. The cap serves to ensure that broadcasters continue to develop television programming alongside new media. Linking the two contributes to a genuinely balanced, multiscreen broadcasting environment and ensures that the benefits truly enhance the Canadian system. As long as new media broadcasting remains an unregulated platform, benefits must primarily be allocated to the traditional system.
12. This brings us to our final point—the valuation of the Glassbox assets. In particular, we draw attention to the unspecified unregulated assets. The total value of the transaction is presented as \$32,350,000 with AUX and BITE valued at \$5 million each and travel + escape at \$10 million. The company's unregulated assets are valued at \$12 million. Should the Commission allow benefits to shift between its new and traditional media services, and should it remove the cap on standalone new media, we respectfully submit that benefits should be paid on the unregulated assets. This would ensure that policy on regulated and unregulated platforms is consistently applied and that the full benefit to the system stemming from transactions such as this is realized.

13. The WGC supports this transaction subject to the issues raised in this intervention. While it is not a large transaction, upholding the principles of the Commission's benefits policy remains important. We look forward to working with Glassbox to further the goals of the Canadian broadcasting system.

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

Yours very truly,

A handwritten signature in black ink, appearing to be 'K. Ashton', written over a horizontal line.

Kelly Lynne Ashton
Director of Policy

c.c.: Maureen Parker, Executive Director, WGC
Jill Golick, President, WGC

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