



September 20, 2013

**Filed Electronically**

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

Dear Mr. Traversy:

**Re: Part 1 Application filed by BCE Inc. following up on the BCE/Astral transaction decision (*Broadcasting Decision CRTC 2013-310*) with respect to Canadian programming expenditures (CPE), Programs of National Interest (PNI), and tangible benefits (Application 2013-1120-9)**

### **Introduction**

1. This is a joint intervention of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the Directors Guild of Canada (DGC), the Canadian Media Production Association (CMPA), and the Writers Guild of Canada (WGC), hereinafter referred to as "the English-language production and creative community". Descriptions of the respective organizations are contained in the Appendix to this intervention.
2. In its decision approving a change in the effective control of certain Astral Media Inc. (Astral) broadcasting undertakings (*Broadcasting Decision CRTC 2013-310*, June 27, 2013), the Commission directed BCE Inc. (BCE) to file the following information (among other information) by July 29, 2013:
  - A revised tangible benefits package for approval by the Commission; and
  - Proposed conditions of licence relating to Canadian programming expenditures (CPE) and Programs of National Interest (PNI) for the remaining television services in the Astral group (i.e., following the divestitures proposed by BCE and approved in *Broadcasting Decision CRTC 2013-310*).

## **Television Benefits**

3. The English-language production and creative community has not conducted a thorough analysis of the revised tangible benefits package filed by BCE. We trust, however, that the Commission will perform its usual rigorous analysis of the proposed revised benefits package and make any necessary adjustments to ensure that it complies fully with the Commission's tangible benefits policy. In particular, we urge the Commission to ensure that on-screen television benefits proposed by BCE are truly on-screen benefits and that all proposed social benefits have a direct link to the Canadian broadcasting system.

## **Calculating CPE and PNI Expenditure Levels for the "New" Astral Group**

4. In *Broadcasting Decision CRTC 2012-241*, the CRTC renewed various Astral pay and specialty television services as a group and imposed conditions of licence requiring it to reach a CPE level of 30% and a PNI expenditure level of 16% of the gross revenues for the preceding broadcast year for all services in the Astral designated group. Consistent with the methodology established in the group-based licensing policy framework<sup>1</sup>, an average of the three previous broadcast years was used to determine the Astral group's appropriate CPE requirement and the group's PNI expenditure requirement was determined based on the average PNI expenditures of the three previous broadcast years of the services within the group. *[emphasis added]*
5. In the context of its application seeking authority to transfer effective control of certain of its broadcasting undertakings to BCE, Astral expressed the view that its CPE and PNI expenditure requirements remained appropriate for the new Astral group. As the Commission noted in *Broadcasting Decision CRTC 2013-310*, however, Astral provided no evidence to substantiate this claim.
6. The Commission stated in *Broadcasting Decision CRTC 2013-310* that the proposed divestiture of several of Astral's television services "would substantially change the composition of the Astral group of services."<sup>2</sup> As such, it was necessary to perform a new calculation to determine the new Astral group's CPE and PNI expenditure percentages.
7. Based on the methodology established in the group-based licensing policy framework, the Commission expressed the preliminary view in *Broadcasting Decision CRTC 2013-310* that a minimum CPE requirement of 32% and a minimum PNI expenditure requirement of 18%, instead of the requirements imposed in Astral's group licensing decision, would be appropriate for the new Astral group going forward.
8. It appears as though the Commission used data from the three most recent broadcast years (i.e., 2010-2012) to establish the preliminary CPE and PNI expenditure requirements for the new Astral group noted above, which is consistent with the methodology set out in the group-based licensing policy framework.
9. Accordingly, the CRTC directed BCE/Astral, as a condition of approval of the transaction, to file an application to revise Astral's group CPE and PNI expenditure percentages based on the remaining services within the Astral group and "using the same methodology utilized to determine its current requirements."<sup>3</sup>

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<sup>1</sup> *Broadcasting Regulatory Policy CRTC 2010-167*, A group-based approach to the licensing of private television services, March 22, 2010.

<sup>2</sup> *Broadcasting Decision CRTC 2013-310*, Astral broadcasting undertakings – Change of effective control, June 27, 2013, at paragraph 208.

<sup>3</sup> *Ibid.*, at paragraph 210.

10. In its post-decision filings submitted to the CRTC, BCE disagrees with the Commission's preliminary CPE and PNI expenditure calculations, suggesting instead that the new CPE percentage be 32% and the PNI spending percentage remain at 16%. The reason for the difference between BCE's calculations and the CRTC's "preliminary" calculations appears to be that BCE used revenues generated by the new Astral group for the broadcast years 2007-2009 and the PNI expenditures of the new Astral group for the broadcast years 2008-2010, while the CRTC used data from the most recent three-year period (i.e., 2010-2012).
11. In a deficiency letter dated August 12, 2013, CRTC staff asked BCE to provide a rationale why it would be appropriate to calculate the CPE and PNI expenditure requirements for the new Astral group using data from the earlier time period rather than the most recent three-year period (i.e., 2010-2012).
12. In its letter dated August 16, 2013 responding to the above-noted deficiency question, BCE states that it is clear from *Broadcasting Decision CRTC 2013-310* that "the Commission's intention is to set CPE and PNI obligations for the remaining Astral services that try to replicate what spending levels for those services would have been fixed at [sic] the last licence renewal had those services been owned separately from the Astral services that are being divested." It went on to state that, in order to do so, the financial information that needs to be used is historical spending on CPE and PNI from 2008-2010 based against revenue from 2007-2009.
13. BCE argues that using more recent information (i.e., data from the 2010-2012 period instead of the period used in setting Astral's CPE and PNI requirements in its group licence renewal) would be inappropriate as it would amount to using a different methodology than was used at the Astral licence renewal and would effectively constitute revisiting the analytical foundation of *Broadcasting Decision CRTC 2013-310*.

***The Position of the English-language Production and Creative Community***

14. The English-language production and creative community respectfully disagrees with BCE's interpretation of the Commission's intention in *Broadcasting Decision CRTC 2013-310* in regards to calculating the new Astral group's CPE and PNI expenditure percentages. BCE has interpreted the Commission's direction to use "the same methodology" used to determine the Astral group's current requirements when calculating the new Astral group's CPE and PNI spending levels to mean using data from the exact average three-year time periods used to calculate Astral's group CPE and PNI expenditure levels as part of its group licence renewal.
15. The confusion, if there is any, about which three-year time period should be used for calculating CPE and PNI expenditure requirements for the new Astral group likely stems from the fact that the Commission did not explicitly state in its group-based licensing policy framework how it would recalculate CPE and PNI expenditure requirements if and when the composition of a designated group were to change in the middle of the licence period.
16. It is clear, however, from a plain reading of the group-based licensing policy framework that the CRTC's methodology in setting CPE and PNI expenditure levels is to use average data from the three previous broadcast years. At the time of the last Astral group licence renewal (in 2011), the financial information that needed to be used was historical spending on CPE and PNI from 2008-2010 based against revenue from 2007-2009. The BCE-Astral transaction effectively created a new Astral group and, as such, a new calculation of CPE and PNI expenditure levels is required. In redoing the calculations today (in 2013), it is appropriate and consistent with the methodology used in the group-based licensing policy framework to use data from the three most recent broadcast years.
17. Indeed, the Commission's preliminary view calculations for CPE and PNI for the new Astral group appear to be based on an average of the most recent three broadcast years, and not the earlier period used by BCE. In our view, that speaks volumes as to the Commission's intentions in

*Broadcasting Decision CRTC 2013-310* in regards to calculating the new Astral group's CPE and PNI expenditure percentages.

18. We also note that it has been the Commission's longstanding approach to use average data from the previous three broadcast years (if available, or the most recent available years) when setting CPE levels for Category B services in the context of calculating baseline CPE for such services with respect to establishing incrementality of tangible public benefits spending. Moreover, it is clear from a very recent CRTC decision<sup>4</sup> that it is the Commission's approach to use data from the most recent years available when setting CPE levels.
19. If BCE's interpretation of the CRTC's methodology to recalculate CPE and PNI expenditure requirements were to hold, one should consider the absurdity of using spending data from 2008-2010 and revenue data from 2007-2009 to recalculate a broadcast group's CPE and PNI expenditure percentages were a transaction to occur in Year 4 of an English-language broadcast group's licence (i.e., in 2015) that changed the composition of said group's services. In this example, using data that are 5-8 years old to recalculate CPE and PNI expenditure requirements would be clearly inappropriate.

### ***The Importance of Access to Service-Specific CPE and PNI Expenditure Data***

20. A final comment we would like to make regarding the calculation of CPE and PNI expenditure levels for the new Astral group concerns the different CPE percentages arrived at by BCE (30%) and the CRTC's preliminary view (32%) when using data from the same 2010-2012 time period. We presume that BCE and CRTC staff are working off the exact same data. It concerns us deeply that when presumably working off the same data, one party has come up with a different percentage.
21. Interested stakeholders (such as members of the English-language production and creative community) are unable to verify the data because they do not have access to detailed and complete CPE and PNI spending data filed by individual television services in their annual returns to the CRTC. While this is not an issue specific to this current process, we feel it is important to express briefly here our increasing frustration with the lack of detailed data that are publicly available on an ongoing basis for interested parties to do research and modelling to support their submissions and recommendations to CRTC proceedings. If service-by-service CPE and PNI expenditure data are not made publicly available as part of the Commission's regular annual public reporting, then unfortunately it will be difficult for interested stakeholders to meaningfully participate in CRTC proceedings in which CPE and PNI issues are central, such as BCE's current application.

### **Conclusion**

22. In closing, the English-language production and creative community urges the Commission to ensure that the revised benefits package proposed by BCE complies fully with the Commission's tangible benefits policy.
23. We also urge the Commission to clarify its methodology, consistent with the group-based licensing policy framework, for calculating a broadcast group's CPE and PNI expenditure requirements when the composition of said group's services changes in the middle of the licence term.
24. In this case, we believe the Commission was correct to base its preliminary view calculations for CPE and PNI for the new Astral group on average data from the most recent three broadcast years. As such, we urge the CRTC to impose conditions of licence on the new Astral group

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<sup>4</sup> See *Broadcasting Decision CRTC 2013-475*, D.I.Y. Network – Licence renewal, September 6, 2013, at paragraph 9.

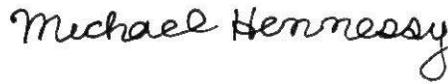
requiring it to spend a minimum of 32% of previous year's group revenues on Canadian programming and a minimum of 18% of previous year's group revenues on PNI.

25. We thank the Commission for the opportunity to provide our comments related to the additional documents filed by BCE in relation to *Broadcasting Decision CRTC 2013-310*.

Yours very truly,



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National Executive Director  
ACTRA



**Michael Hennessy**  
President and CEO  
Canadian Media Production Association



**Gerry Barr**  
National Executive Director and CEO  
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## **APPENDIX**

The **Alliance of Canadian Cinema, Television and Radio Artists** (ACTRA) provides the perspective of 22,000 professional performers working in the English-language recorded media in Canada. For more than 67 years ACTRA has represented the performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, sound recordings, radio, and digital media.

The **Canadian Media Production Association** (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.

The **Directors Guild of Canada** (DGC) is a national labour organization that represents key creative and logistical personnel in the film, television, and digital media industries. Its membership includes over 3,800 individuals drawn from 47 different occupational categories covering all areas of direction; production; editing; and design of film, television, and digital media production in Canada.

The **Writers Guild of Canada** (WGC) is the national association representing more than 2,200 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 its members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, it also plays a role in balancing competing interests in the broadcasting system.

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