Writers Guild of Canada

April 19, 2018 **Filed Electronically**

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

Dear Mr. Doucet:

**Re: Broadcasting Notice of Consultation CRTC 2018-95: Application 2017-1060-9 – Application by Bell Media Inc. (Bell), on behalf of Corus Entertainment Inc. (Corus), for authority to effect a change in the ownership and effective control of 8504644 Canada Inc. (8504644) and 8504652 Canada Inc. (8504652), the respective licensees of the French-language discretionary services Historia and Séries+**

1. The Writers Guild of Canada (WGC) is the national association representing approximately 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.

2. Given the nature of the WGC and its membership, our comments in this proceeding are limited to an issue that we believe is likely to impact the English-language market in Canada, namely, the request by Bell Media Inc. (Bell) for an exception to Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), seeking to direct 82.8% of the benefits to two French-language components of certified independent production funds (CIPFs), namely the Bell Fund and the Fonds Harold Greenberg. The WGC **opposes** this request, because it is inconsistent with the Tangible Benefits Policy, and because it raises issues of consistency and fairness as between the English and French markets.

**Application of the Tangible Benefits Policy**

3. The Tangible Benefits Policy states:

> Accordingly, to ensure that future tangible benefits are streamlined, incremental, non-self-serving and directed mainly to the production of Canadian programming, the Commission will require the following:

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- at least 80% of all tangible benefits relating to changes in the effective control of licensed television undertakings shall be allocated to the funds unless a compelling case is made that other measures could better meet the public interest; and

- of this amount, at least 60% shall be allocated to the [Canada Media Fund] (CMF) and no more than 40% to the CIPFs unless a compelling case is made that another allocation formula could better meet the public interest.[1]

4. The Tangible Benefits Policy also reiterates a concept which has been part of the Commission's approach to tangible benefits for some time, namely, that such benefits "will yield measurable improvements <u>to the communities served by the broadcasting undertaking to be acquired</u>, as well as the Canadian broadcasting system as a whole."[2] [Emphasis added.] Prior to the current Tangible Benefits Policy, the requirement that tangible benefits yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, perhaps combined with the fact that tangible benefits were self-administered by the purchasers themselves, traditionally meant that benefits associated with English-language services were directed to English-language initiatives, and benefits associated with French-language services were directed to French-language initiatives. In other words, tangible benefits generally "stayed within their linguistic market". For example, in Broadcasting Decision CRTC 2013-310, *Astral broadcasting undertakings – Change of effective control*, the Commission considered that the allocation proposed for the revised tangible benefits package therein was consistent with prior public notices and with the Commission's general approach, including in regard to "the English- and French-language allocations for the on-screen benefits [being] consistent with the linguistic markets of the services to be acquired."[3]

5. With the release of the current Tangible Benefits Policy in 2014, however, the Commission necessarily amended that approach, by virtue of requiring that 60% of 80% of benefits be directed to the CMF. As stated by the CMF in its comments to the consultation proceeding leading up to the Tangible Benefits Policy,[4] "Under the terms of its Contribution Agreement with Canadian Heritage, CMF's program funding must be allocated on the basis of two-thirds to English-language projects, and one-third to French-language projects."[5] The WGC understands that this requirement applies to monies received by the CMF under the Tangible Benefits Policy. As such, the Commission has moved from a system in which tangible benefits "stay within their linguistic market" to one in which at least 60% of 80% are split between English and French, ⅔/⅓. The Commission was aware of this at the time it created the current Tangible Benefits Policy, by virtue of the CMF's above-quoted comments, as well as the WGC's similar comments in the same proceeding.[6]

6. The WGC submits that having amended the approach to allocating tangible benefits monies within and between linguistic markets, the Commission must be fair and consistent in its application, and

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[1] Para. 24.
[2] Para. 1.
[3] Para. 159.
[4] Broadcasting Notice of Consultation CRTC 2013-558
[5] Submission of the Canada Media Fund to Broadcasting Notice of Consultation CRTC 2013-558, para. 38.
[6] Submission of the WGC to Broadcasting Notice of Consultation CRTC 2013-558 (http://www.wgc.ca/files/WGC%20on%20Tangible%20Benefits%20Review%20(jan13).pdf), paras. 10-12.

that such fair and consistent application is in the public interest (and, conversely, an unfair and inconsistent application of the policy is not in the public interest). Bell's stated rationale for seeking to direct 82.8% of the benefits to two French-language components of certified independent production funds (CIPFs), is to maintain the pre-2014 approach to linguistic markets. Bell states:

> A fundamental objective of the Benefits Policy is that tangible benefits are meant to "yield measurable improvements to the communities served by the broadcasting undertaking to be acquired". The two discretionary services being acquired are French-language services; however roughly two-thirds of every dollar allocated to the CMF is directed towards English-language productions, with only one-third allocated to French-language productions. Therefore, it appears to be inconsistent with the Benefits Policy to direct a large portion of benefits monies to an initiative that will not benefit the communities served by the discretionary services being acquired.
>
> As such, Bell Media is requesting an exception to the standard Production Funds Allocation requirements, so that all of the benefits monies can be directed towards French-language components of CIPFs that can be accessed by francophone independent producers.[7]

7. The WGC understands this rationale. The WGC itself argued in 2013 that benefits monies should continue to remain within the linguistic market of the services to be acquired.[8] However, the Commission has now adopted the current Tangible Benefits Policy, and the CMF is bound by its obligations to Canadian Heritage to allocate program funding on the basis of two-thirds to English-language projects, and one-third to French-language projects. As such, we submit that the Commission must now ensure that the Tangible Benefits Policy is administered consistently and fairly. If Bell's request is accepted, 100% of the "on-screen" benefits of this transaction would be directed to the French market. A subsequent English-market transaction that follows the Tangible Benefits Policy, however, would direct only 66.6% of 60% of 80% of its tangible benefits monies to the English market. We submit that the net result of this inconsistent application would be unfair to English-language audiences and content creators, which would benefit disproportionately less from the transaction, and therefore it would not be in the public interest.

8. Moreover, we submit that the solution is *not* to simply grant English-language purchasers the same broad discretion to direct 100% of on-screen benefits to the English-market CIPFs of their choice. For one thing, this would vitiate the production funding formula in the Tangible Benefits Policy almost entirely. For another, the WGC would wish to advocate for the CMF to be the primary recipient of benefits monies in the English market, both for the reasons noted by the Commission itself in the Tangible Benefits Policy, and because the CMF is a 10-out-of-10 CAVCO point fund,[9] and the WGC has consistently argued for the value of Canadian content being Canadian-*created*, including that it is written by Canadians, and not simply Canadian-produced or Canadian-financed—something that is

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[7] Application of Bell Media Inc. – APP -Doc3 – Appendix 1 – Supplementary brief -ENG, paras. 42-43.
[8] Submission of the WGC to Broadcasting Notice of Consultation CRTC 2013-558 (http://www.wgc.ca/files/WGC%20on%20Tangible%20Benefits%20Review%20(jan13).pdf), para. 12.
[9] E.g. Performance Envelope Program Guidelines, 2018-2019, CMF (https://www.cmf-fmc.ca/getattachment/6f543af0-769e-46ca-a9a9-9722658125e9/Performance-Envelope-Program-Guidelines.aspx), s. 3.2.TV.1: Essential Requirements.

not consistent with a 6-out-of-10 point requirement that CIPFs are currently subject to.[10] Further, it would not be possible for the Commission to seek to "engineer" balanced contributions to both language markets on an ad hoc basis, since the Commission cannot predict the scope of future transactions, nor if they will even occur.

9. To obtain an exception to the requirement that at least 60% of the 80% to production funds be allocated to the CMF, a "compelling case" must be made, and the onus in making it is on the party requesting the exception.[11] To date, the Commission has not determined that such a standard has been met, and has consistently applied the tangible benefits allocation formula as written, including in Broadcasting Decision CRTC 2015-227, *Follow-up to conditions of approval relating to the transaction involving the services MusiquePlus and MusiMax*, and Broadcasting Decision CRTC 2015-243, *Applications related to tangible benefits [with respect to the BCE/Astral transaction]*. Tangible benefits monies from at least one previous, English-market transaction have already been directed to the CMF,[12] and the Commission currently has before it another English-market transaction in which the applicant proposes to direct 60% of its tangible benefits monies to the CMF.[13] If the latter is approved, this will mean that at least two English-market transactions will presumably have had a portion of their associated tangible benefits monies directed to the French market, by virtue of the CMF's language-market allocation formula. As such, we submit that the Commission has already established a practice of generally adhering to the Tangible Benefits Policy allocation formula, and this should continue.

10. For these reasons, the WGC submits that the Commission must apply the Tangible Benefits Policy in a way that is fair and consistent as between linguistic markets, which in our view includes applying the Tangible Benefits Policy production fund formula as written at paragraph 24 of that policy and denying Bell's request to allocate 100% of on-screen benefits to CIPFs. We also note that Bell has stated that it is willing to adhere to this standard requirement should the Commission determine that this proposed allocation is not in the public interest, which we have just argued it is not.[14]

**Annual Tangible Benefits Reports**

11. The WGC recommends the Commission explicitly require Bell to file reports annually detailing spending on tangible public benefits related to this transaction, as a condition of approval of the transaction. This has been a standard requirement in the past, but in cases where the Commission has inadvertently failed to do so explicitly, the broadcasters involved have not filed such annual reports, and it has proven difficult for the Commission to compel them to do so after the fact. These reports are important and necessary to allow industry stakeholders and the public to track benefits spending separate from baseline regulatory obligations.

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[10] See CMF submission to Broadcasting Notice of Consultation CRTC 2017-359: *Call for comments on the Governor in Council's request for a report on future programming distribution models* (http://www.wgc.ca/files/WGC%20Submission_BNC%202017-359_Future%20programming%20models_FINAL.pdf) paras. 51-52, 63-72, 79-84.
[11] Broadcasting Decision CRTC 2015-227, para. 15.
[12] Broadcasting Decision CRTC 2014-421.
[13] Application 2017-1027-8, WOW! Unlimited Networks Inc.
[14] Application of Bell Media Inc. – APP -Doc3 – Appendix 1 – Supplementary brief -ENG, para. 44.

**Conclusion**

12. The WGC is pleased to provide comments in this proceeding.

Yours very truly,

Maureen Parker
Executive Director

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Bell Media Inc. (kevin.goldstein@bellmedia.ca)

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