Writers Guild of Canada

April 5, 2013 **Filed Electronically**

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

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2013-106, Item #1 – Application by Astral Media Inc. (the "Applicant") for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc. (Application 2013-0244-7)

<u>Introduction</u>

1. 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 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-referenced Application for authority to change the effective control of Astral, subject to BCE and the CRTC addressing the following comments and concerns. The WGC wishes to appear at the public hearing scheduled to commence on May 6, 2013 in Montreal in order to further elaborate on the issues addressed in this intervention from the perspective of English-language screenwriters.

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

366 Adelaide Street West
Suite 401
Toronto, Ontario M5V 1R9

Tel 416 979-7907
1-800-567-9974
Fax 416 979-9273
info@wgc.ca www.wgc.ca

Diversity of Voices and Programming

4. In its Diversity of Voices policy[1], introduced in 2008, the Commission established that, as a general rule, it would not approve applications for a change in effective control that would result in the control, by one person, of a dominant position in the delivery of television services to Canadians that would impact on the diversity of programming available to television audiences. The Commission also stated that, barring other policy concerns, transactions resulting in one person controlling less than 35% of the total television audience share would be processed expeditiously, whereas it would carefully examine transactions where one person controlled between 35% and 45% of the total television audience share.

5. The WGC also notes that one of the objectives of the Diversity of Voices proceeding included maintaining "plurality of ownership within the private element" of the broadcasting system, as well as ensuring that further consolidation "provides a net benefit to Canadian audiences and to the creation of Canadian programming."[2]

6. Astral notes that the combined viewing share of Astral and BCE's television undertakings in the English-language market would be 35.7% following the transaction and the divestitures proposed. Astral submits that this should not be cause for concern as the 35.7% level is only slightly higher than BCE's current audience share.

7. The WGC submits that, regardless of the audience share held by a broadcast group, whenever one broadcast group acquires another there is a very real potential, indeed likelihood, for a reduction in diversity of programming available to television audiences. For one, this transaction will reduce the number of owners and licensees of television undertakings in both the English- and French-language private element of the Canadian broadcasting system. It will result in the disappearance of one of the remaining few independent broadcast groups (Astral), while increasing the size and power of a vertically-integrated broadcast ownership group (BCE).

8. More importantly, as we've seen following past transactions, broadcasters will want to amortize the cost of programming (both Canadian and foreign) over its multiple broadcasting services thereby increasing second- and third-window (repeat) programming within the broadcasting system, at the expense of original programming.

9. The Diversity of Voices policy confirms the importance of diversity of content and the Commission's role in "ensuring that Canadians receive programming from different sources."[3] 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.

10. Consolidation and the Group Licensing Policy also mean that programmers are not just picking a show that will work for a particular programming 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, one can watch "The Listener" on CTV, CTV Two, and Bravo.

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[1] *Broadcasting Public Notice CRTC 2008-4*, Regulatory Policy – Diversity of Voices, January 15, 2008.

[2] *Broadcasting Public Notice CRTC 2008-4*, Regulatory Policy – Diversity of Voices, January 15, 2008, at paragraph 25.

[3] *Broadcasting Public Notice CRTC 2008-4*, Regulatory Policy – Diversity of Voices, January 15, 2008, at paragraph 19.

11. BCE's purchase of Astral is particularly troublesome for two reasons. The first is that The Movie Network (TMN) has made a name for itself in commissioning—jointly with Movie Central—edgy, adult comedies and dramas such as "Call Me Fitz" and "Durham County" that cannot be broadcast on mass market/audience networks such as CTV and Global because of their subject matter, use of course language, and/or nudity. If, as a consequence of this transaction, TMN will in the future commission programs that can also be aired on other BCE programming services, 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 and edgy scripted adult comedy and drama—the loss of program diversity.

12. The WGC is not suggesting that the Commission deny the transaction due to the Diversity of Voices concerns outlined above but given the potential harm to the Canadian broadcasting system, the Commission has a higher duty of care to ensure that the transaction does not result in a significant reduction in the diversity of programming available to Canadian television audiences and that it truly benefits the Canadian broadcasting system as a whole.

13. The WGC submits that one way to safeguard the diversity of programming in the English-language television market following this transaction is to require that all tangible benefits funding directed to English-language Programs of National Interest (PNI) be allocated to the development and production of original programming for first-run broadcast on TMN and not BCE's other programming services.

Determining the Correct Total Value of the Transaction and the Regulated Television Assets For the Purpose of Assessing the Quantum of Television Tangible Benefits

14. Valuation is a very complicated and subjective exercise. Purchasers of broadcasting assets will naturally, wherever possible, make choices and assumptions when calculating the value of the assets being acquired so as to reduce their transaction costs, namely the quantum of tangible public benefits payable.

15. The WGC does not have the experience or resources to do an exhaustive review of the valuation proposed by BCE or challenge assumptions upon which the valuation was made. There are, however, a few aspects of the valuation with which we are particularly concerned.

16. Although the overall value of the transaction remains unchanged in the PricewaterhouseCoopers (PwC) Revised Valuation Report (the "Revised Valuation Report") filed with the Application from the original valuation report submitted as part of the first application filed with the CRTC last year, the Revised Valuation Report has now increased the value of Astral's out-of-home advertising business by $354 million and the Astral Media Plus business by $6 million. Although the Revised Valuation Report has also decreased the value of "Online and other" by $48 million, the overall result is that the Revised Valuation Report increases the total value attributed to non-regulated assets (or assets excluded from the tangible benefits policy) by $312 million, or almost 40%, from $793 million to $1.105 billion. This change allows BCE to now effectively argue that the valuation that had previously formed the base for the calculation of tangible benefits should be reduced by $312 million.

17. The Commission's long-standing rule is that, for the purpose of applying its tangible benefits policy, the value of a transaction is to be determined as of the date of the

transaction. The Revised Valuation Report attempts to revise upward the value of the non-regulated assets as of a more recent date from the date of the transaction, which, if accepted, would effectively reduce the amount of benefits payable. The WGC submits that this is contrary to the Commission's policy and should be disallowed.

18. Accordingly, we urge the Commission to carefully review the true value of the unregulated assets that are part of this transaction, such as digital media, out-of-home advertising, and Astral Media Plus.

19. In addition, the WGC disputes BCE's assertion that Astral's subscription video-on-demand (SVOD) services be excluded from the regulated television assets that are subject to the payment of tangible benefits. BCE argues that Astral's SVOD services should not be considered part of the value of the regulated assets because Astral's SVOD services essentially act as unregulated content providers to broadcast distribution undertakings' (BDUs) licensed VOD services.

20. The WGC disagrees with this analysis and agrees with the suggestion made by CRTC staff in its deficiency letter dated February 12, 2013 that Astral's SVOD services are an extension of their respective regulated linear television services. In fact, they use the linear television services' brand rather than the brand of respective BDUs (e.g., TMN On Demand). Anyone who is a subscriber to TMN knows that the TMN On Demand SVOD offering is a fundamental and inextricable part of the TMN linear television offering. In fact, Astral executives have noted publicly on several occasions that TMN On Demand is a key value proposition for TMN subscribers that significantly improves churn or the "stickiness" of the TMN service. Accordingly, the WGC submits that the value of the SVOD services should be included in the value of the regulated television assets for the purpose of assessing the quantum of television benefits that are payable as part of this transaction.

21. Similarly, the WGC also urges the Commission to carefully review those aspects of digital media, such as websites affiliated with Astral's regulated linear television services, which are operated as part of the licensed broadcasting businesses, should be carefully reviewed. For example, it is an artificial exercise to value the website themovienetwork.ca separately from the TMN television service when the two are so inextricably linked in today's multi-platform media environment. 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.

22. In addition, we ask the Commission to pay particular attention to the valuation 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 television benefits payable.

23. In summary, we trust that the Commission will conduct its usual due diligence of the value of the BCE-Astral transaction for the purpose of assessing tangible benefits and make the necessary adjustments to the valuation. In particular, we expect the Commission to continue its longstanding practice of including the value of conditional future payments, operating lease commitments, and assumed debt and liabilities in the value of transactions for the purpose of assessing the appropriate quantum of benefits in this transaction.

24. We also expect the Commission to be diligent in ensuring the values assigned to the regulated assets are fair and proper compared to those assigned to the unregulated assets, as well as the value assigned to the television assets vs. radio assets.

Television Benefits

25. The WGC commends BCE for significantly revising its proposed television benefits package from that filed in the original application to comply with the Commission's tangible benefits policy and past practices, particularly the split between on-screen/programming-related benefits and social benefits. As such, the WGC has only a few concerns related to the television benefits proposed by BCE in its new Application, which are outlined below.

Incrementality of Benefits Spending

26. Generally, measurement of the incrementality of benefits spending is fairly straightforward. Purchasers of television assets are required to ensure that benefits money is on top of what they would have already spent. Under the Group Licensing Policy, that means in addition to a broadcast group's Canadian programming expenditure (CPE) and PNI requirements. There is an added twist in this transaction, however, in that on the one hand BCE is proposing not to combine the CPE and PNI requirements of the BCE and Astral corporate groups but on the other hand is proposing to spread the spending of programming benefits funds throughout the new combined company as and where it deems appropriate.

27. 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 different CPE and PNI levels, we request that the Commission ask BCE for a specific proposal for clear measurement of incrementality.

Programming Benefits Funds Should Also Go Towards Development and Not Just Production

28. The WGC would like to see minimum amounts under the English-language PNI benefits stream, the Harold Greenberg Fund (HGF) stream, and the contribution to Telefilm Canada's Private Donation Fund specifically committed for script and concept development.

29. BCE has not proposed a specific amount for development under the $24.56 million it proposes to allocate to English-language PNI. Similarly, while it proposes to allocate $7 million for script and concept development out of the $18.8 million it proposes to contribute to the HGF for French-language initiatives, BCE makes no minimum commitment to development related to its proposal to contribute $5 million to the HGF for English-language initiatives. Finally, to our knowledge, Telefilm's Private Donation Fund does not specifically support development.

30. 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 programs of national interest are to be successful with Canadian audiences, then development needs to be adequately funded.

31. Accordingly, the WGC recommends that a minimum of 15% of the benefits dollars directed to English-language PNI be allocated specifically for script and concept development. Moreover, a minimum of 37% of the benefits dollars directed to the HGF for English-language initiatives should be allocated specifically to script and concept development, which is consistent with the proportion of benefits funds BCE proposes to allocate to development under its proposed contribution to the HGF for French-language initiatives. Finally, a minimum of 15% of the benefits funds directed to Telefilm's Private Donation Fund should be allocated specifically for script and concept development.

32. If Telefilm is unable to accommodate minimum contributions to development, then the WGC recommends that the Commission reject this benefits initiative and require BCE to redirect the proposed $5 million in benefits funds originally slated for Telefilm to the HGF instead since the HGF has a long and successful track record in funding both development and production.

7-Year Term for the Payment of Tangible Benefits

33. BCE proposes to spend the television benefits over a period of 7 years. Even though the Commission is now generally renewing television licences for a period of no more than 5 years, the WGC does not object to a 7-year term for the payment of benefits flowing from this transaction. However, 7 years must mean 7 years without exception.

34. In this regard, the WGC feels compelled to urge the Commission to be more vigilant than it has in the past in ensuring that television benefits packages be expended in the original timeframe approved by the Commission. We find it extremely troubling and disappointing that 13 years after the BCE-CTV benefits package relating to the 2000 transaction commenced, just over $1 million in benefits funds remained to be spent as of August 31, 2012.[4] While Bell Media indicated in November 2011 that all remaining funds would be paid out entirely by December 2012, in November 2012 it stated that all remaining funds would be expended by "early 2013."[5] All of this means that BCE/Bell Media will have taken five years longer to fulfill its benefits requirements in that transaction. This is completely unacceptable.

35. Moreover, Bell Media still owed a small amount of its share of benefits funds related to the original CHUM-Craig Media transaction as of August 31, 2012, 8 years after that benefits package came into effect.

36. Of more immediate concern to the WGC is the speed (or lack thereof) in which Bell Media is paying out benefits funds from the Bell Media-CHUM television benefits package. Five years into that 7-year benefits term, Bell Media has expended just 51% of total television benefits funds required, including only 48% of funds devoted to on-screen and programming-related benefits.[6]

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[4] Bell Media-CTV (2000 transaction) 2011-2012 Tangible Benefits Report filed with the CRTC.

[5] Bell Media-CTV (2000 transaction) 2010-2011 and 2011-2012 Tangible Benefits reports filed with the CRTC.

[6] *Canadian Television Benefits Monitor* – 2013 Report, to be published shortly by Boon Dog Professional Services Inc.

37. Quite simply, the Commission must be more vigilant and diligent in ensuring that tangible benefits funds, including the funds that will flow from this transaction, are expended in roughly equal amounts over the benefits term and within the intended timeframe.

Back-ending Benefits Payments for English-Language PNI

38. BCE proposes to back-end the payment of benefits for English-language PNI beginning in Year 5 of the 7-year benefits term rather than spreading payments out roughly equally over the benefits term as is normally required. The WGC does not object to making an exception to the Commission's normal practice and partially approving BCE's proposal in the context of this transaction only.

39. For clarity, BCE should be required to begin making benefits payments for English-language PNI in Year 1 of the benefits term but an exception could be granted to allow it to back-end the payments in the final three years of the benefits term.

40. Should the Commission agree with this approach it should not be seen as creating a precedent that could be followed in future transactions. We urge the Commission to be clear that approving any back-ending of benefits payments is considered an exception to its normal practice.

Conclusion

41. In closing, the WGC conditionally supports the Application for authority to change the effective control of Astral, subject to our comments above.

42. We respectfully request that the Commission err on the side of the overall Canadian broadcasting system when reviewing this transaction. Consolidation may be good for BCE's business but it has the potential to limit creative opportunities and programming choices in the system. This transaction will result in significant media consolidation that has the potential to reduce the diversity of creative voices in the Canadian broadcasting system, particularly in the areas of edgy adult comedy and drama programming. A strong Canadian broadcasting system needs both strong broadcasters and a vibrant and diverse talent pool in order to thrive.

43. Specifically, we ask that the Commission:

a) Take measures to ensure that the transaction does not result in a significant reduction in the diversity of programming available to Canadian television audiences;

b) Ensure that the total value of the transaction is appropriate and that the value assigned to the regulated assets vs. non-regulated assets and between the television and radio assets is fair and proper;

c) Ensure that minimum amounts (as proposed above) of programming benefits funds are also directed to script and concept development and not just production; and

d) Be vigilant in ensuring that all benefits funds related to this transaction are expended in the timeframe approved by the Commission.

44. We thank the Commission for the opportunity to provide our comments related to this transaction, and look forward to elaborating on them at the public hearing.

Yours very truly,

Maureen Parker
Executive Director

c.c.: National Council, WGC
Nathalie Dorval, Vice-President, Regulatory Affairs and Copyright, Astral Media Inc. (ndorval@astral.com)

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