Writers Guild of Canada

November 28, 2019 **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 2019-358, Application 2019-0648-9: Bell Canada, on behalf of V Interactions inc.

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. This is an application by Bell Canada (Bell), on behalf of V Interactions inc. (V), for authority to change the ownership and effective control of V. V is the licensee of a French-language television network called V and of five French-language television stations.

3. Given the nature of the WGC and its membership, we are limiting our comments to those that we believe may affect and/or set a precedent with respect to the English-language market.

4. As stated in the Notice of Consultation for this proceeding, Bell proposes a tangible benefits package of $2,520,451 with respect to this transaction, which is equal to 10% of the value of the transaction. It also proposes to allocate 60% of this amount to the Canada Media Fund (CMF) and 40% to the Bell Fund. Since the transaction involves French-language assets, Bell proposes that all of these amounts be used for French-language programming initiatives.

5. The WGC's primary comments in this proceeding relate to how tangible benefits monies administered by the CMF and/or Certified Independent Production Funds (CIPFs) should be allocated with respect to language markets, with respect to both this application and future applications. In brief, the WGC submits that such tangible benefits monies should be allocated in a fair and consistent manner with respect to language. The WGC opposes a system in which benefits monies are allocated between

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language markets in an arbitrary manner, sometimes being disbursed by funders to one language market only and sometimes split between both markets, based on arbitrary factors such as whether the applicant specifies the language market in their application or not.

6. Broadcasting Regulatory Policy 2014-459 (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
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> - 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]

7. 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.]

8. Prior to the Tangible Benefits Policy, the requirement that tangible benefits yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, combined with the fact that tangible benefits were self-administered by the purchasers, 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]

9. With the release of the Tangible Benefits Policy in 2014, however, the Commission appeared to have 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-

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[1] Broadcasting Regulatory Policy 2014-459, para. 24.
[2] Broadcasting Regulatory Policy 2014-459, para. 1.
[3] Broadcasting Decision CRTC 2013-310, para. 159.
[4] Broadcasting Notice of Consultation CRTC 2013-558.

third to French-language projects."[5] Absent some further statement or clarification, the WGC has understood that this requirement applies to monies received by the CMF under the Tangible Benefits Policy. As such, given the plain wording of the Tangible Benefits Policy, combined with the CMF's obligation to Canadian Heritage pursuant to the Contribution Agreement, the Commission in 2014 appeared to have 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 French and English, on a one-third/two-thirds basis.

10. The WGC has presumed that the Commission was aware of this impact 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 highlighting this fact.[6] The WGC also raised the issue in Broadcasting Notice of Consultation CRTC 2018-95: Application 2017-1060-9 (Bell/Corus-Historia/Series+).[7] 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 that such fair and consistent application is in the public interest.

11. How that fairness and consistency is accomplished may be up for debate. In 2014, in the consultation proceeding leading up to the new Tangible Benefits Policy, the WGC argued that benefits monies should continue to remain within the linguistic market of the services to be acquired.[8]

12. However, in Bell/Corus-Historia/Series+, after the release of the Tangible Benefits Policy, the WGC reasoned that the Commission had adopted the new 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 proposed that the Commission ensure fairness and consistency by simply following the formula in the Tangible Benefits Policy and allowing all monies directed to the CMF be split according to their one-third/two-thirds formula. This would have prevented, in the case of Bell/Corus-Historia/Series+, 100% of the "on-screen" benefits of the transaction being directed to the French market, whereas a subsequent English-market transaction that followed the Tangible Benefits Policy would direct only 66.67% of 60% of 80% of its tangible benefits monies to the English market, resulting in a clearly unfair and inconsistent outcome. We also raised concerns about simply granting English-language purchasers the same broad discretion Bell then sought, including our concern about Bell's proposal to divert all monies to CIPFs rather than the CMF.

13. There have been a number of transactions under the Tangible Benefits Policy in which the allocation of benefits to language markets appears unclear and/or inconsistent. For example, by our count, the following transactions did not specify whether tangible benefits administered by the CMF would be

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[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.
[7] Submission of the WGC to Broadcasting Notice of Consultation CRTC 2018-95: Application 2017-1060-9 (https://www.wgc.ca/sites/default/files/resource/2018-09/WGC%20Submission%20BNoC%20%20%202018%2095%20Historia%20and%20Series.pdf).
[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.

dedicated to one language market or another, and therefore presumably were subjected to the CMF's standard, one-third/two-thirds formula:

- Stingray Digital Group/Newcap (Broadcasting Decision CRTC 2018-404)
- WOW! Unlimited Networks/Comedy Gold (Broadcasting Decision CRTC 2018-230)
- Remuda Media/Game TV (CRTC Letter of Approval, March 9, 2018)
- Anthem Media/Game TV (CRTC Letter of Approval, November 25, 2016)
- Groupe V Media/MusiquePlus & MusiMax (Broadcasting Decision CRTC 2014-465; Broadcasting Decision CRTC 2015-227)
- Moviola (Broadcasting Decision CRTC 2014-421)

14. Of those transactions, five involved services operating in the English market, representing just over $1.55 million in tangible benefits. In the case of WOW!*,* for example, the applicant said, "In accordance with the Commission's revised policy regarding tangible benefits, *Broadcasting Regulatory Policy 2014-459*, WOW is proposing 60% of the tangible benefits amount totalling $412,200 be allocated to the CMF in equal instalments over a seven year period to be directed by the CMF towards the production of incremental, original Canadian content."[9] In its decision approving the transaction, the Commission said, "the Commission approves WOW Networks' proposed tangible benefits of $687,000. In regard to the distribution of monies from that tangible benefits package, as proposed by WOW Networks, the Commission directs the applicant to allocate $412,200 (60% of its proposed tangible benefits package) to the CMF and $137,400 (20% of its proposed tangible benefits package) to the Rocket Fund."[10] In this case, neither the applicant nor the Commission raised or addressed the question of the language market of the benefits with respect to the CMF. In the case of Movieola, the Commission simply said, "the Commission directs Moviola Short Film to allocate the tangible benefits amounting to $121,060 to the CMF, to be paid in equal annual installments over the three years of Movieola's licence term."[11] Again, the issue was neither raised by the applicant nor addressed by the Commission. The WGC understands that these benefits monies have ultimately been allocated by the CMF according to its one-third/two-thirds formula with respect to English-language and/or French-language program production.

15. By contrast, in the application by Quebecor Media Inc. (Quebecor) to acquire French-language discretionary services Zeste and Évasion, the Commission noted that its regulatory framework, "does not set out the allocation of tangible benefits funds based on projects in specific languages. However, Quebecor agreed to devote all of these amounts to French-language productions."[12] The Commission also directed Quebecor to file, as a condition of approval, an agreement with the CMF, Telefilm Canada and the Quebecor Fund confirming that the tangible benefit funds will be used for the scripting and development of French-language concepts.[13] This appears to have been a markedly different approach from the other transactions noted above.

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[9] Broadcasting Notice of Consultation CRTC 2018-106 – Application 2017-1027-8: Application by WOW! Unlimited Networks Inc. (WOW) for authority to acquire from Bell Media Inc. (Bell) the assets of the national English-language discretionary service known as Comedy Gold, Appendix 1A, Supplementary Brief, para. 38.
[10] Broadcasting Decision CRTC 2018-230, para. 51.
[11] Broadcasting Decision CRTC 2014-421, para. 34.
[12] Broadcasting Decision CRTC 2019-6, *Zeste and Évasion – Change in ownership and effective control*, para. 42.
[13] *Ibid.*, para. 44.

16. The WGC submits that the Commission—or the Commission in cooperation with the CMF, CIPFs, and/or the Department of Canadian Heritage, which ultimately has oversight of the CMF—should establish and make public a policy or procedure to ensure that tangible benefits monies administered by the CMF and/or CIPFs are disbursed fairly and consistently with respect to language market. We submit that it should not be the case that when an applicant specifically requests that most or all tangible benefits be directed to a particular market, as is the case in the present proceeding, then the monies will be so directed, but if the applicant neglects to specify, for whatever reason, as was the case in examples like WOW!, then the monies will be split according the CMF one-third/two-thirds formula, or otherwise in a manner that does not yield measurable improvements to the communities served by the broadcasting undertaking to be acquired. We submit that such a practice would be unfair and inconsistent, and therefore not in the public interest.

17. The WGC has made proposals in the past on how that might be achieved, based on the context and information available to us at the time. Based on the current context and information available, the WGC would now make the same proposal that we put forward in Broadcasting Notice of Consultation CRTC 2013-558, namely, that benefits monies should continue to remain within the linguistic market of the services to be acquired. This approach seems most consistent with the Commission's stated policy objective, both pre- and post-2014, to ensure that tangible benefits "will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired". In the present application, that would result in allowing Bell's proposal that all of these amounts be used for French-language programming initiatives, since the transaction involves French-language assets. Obviously, the WGC would expect future transactions involving English-language services to result in tangible benefits directed entirely to the English market, whether or not the applicant specifically raises the issue themselves. Ultimately, however, what we seek above all else is a fair and consistent outcome, and not necessarily any particular mechanism.[14]

18. We thank you for the opportunity to provide these written comments.

[14] That said, the WGC opposed, and would continue to oppose, the method proposed by Bell in Bell/Corus-Historia/Series+, which was to obtain an exception to the Tangible Benefits Policy and direct 100% of on-screen benefits to the CIPF of Bell's choice to ensure they would be directed to French-language programming. As we said then, the appropriate response to such a proposal 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, 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 not consistent with a 6-out-of-10 point requirement that CIPFs are currently subject to.

Yours very truly,

Maureen Parker
Executive Director

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