Writers Guild of Canada

January 24, 2022 **Filed Electronically**

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

Dear Mr. Doucet:

Re: Part I Application by Stingray Group Inc. to Amend the Letter Decision Concerning Application No: 2015-0096-8, Broadcasting Decision CRTC 2018-404 and Broadcasting Decision CRTC 2019-253 by Altering the Tangible Benefits Payable for Broadcast Years 2019-20 and 2020-21

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 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. The applicant, Stingray Group Inc. (Stingray), describes itself as a music, media and technology company with licensed Canadian broadcasting services that include 101 radio stations, a national pay audio service, and two over-the-air television stations. Stingray's tangible benefits obligations include television benefits in the amount of $859,277, payable to the Canada Media Fund and the Bell Fund over seven years. The WGC understands that Stingray proposes to pay these television benefits in accordance with the Commission's decision in Broadcasting Decision CRTC 2021-274: *Regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic*, which followed the July 2020 application of the Canadian Association of Broadcasters (CAB) seeking such relief.[1]

3. As such, the WGC understands the gist of Stingray's application to involve radio benefits with respect to music. Given the nature of the WGC's membership and expertise, we will not comment on the specifics of these music-related proposals. We do have concerns, however, regarding some of the

[1] Application, para. 34, third bullet: "All other tangible benefits payments for broadcast years 2019-20 and 2020-21 will be made in 2021-22 and 2022-23 as envisioned by in BD 2021-274."

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broader arguments Stingray makes in their application, and therefore we are making an intervention in this proceeding.

4. The WGC generally opposes any application by licensees to reduce the tangible benefits amounts owing pursuant to Commission decisions. Tangible benefits packages are arrived at through established policies[2] and processes, and normally permit licensees to provide evidence and make submissions prior to their determination. Absent some unique and compelling case, the WGC sees no general reason for licensees to seek to reduce tangible benefits once they have been arrived at.

5. In this application in particular, Stingray notes the effect of the COVID-19 pandemic, as well as larger structural challenges in the sector, and then states, "All these developments have impacted the value of Stingray's Canadian broadcasting assets – the same value that was determined by the Commission at the time tangible benefits were imposed."[3]

6. The WGC is concerned that this statement argues or implies that the Commission should take into consideration developments in the broadcasting sector negatively affecting the value of assets that occur after tangible benefits packages are determined, and use those developments to reconsider existing tangible benefits obligations. In other words, Stingray appears to be arguing that the Commission should retroactively re-value transactions downwards for the purposes of tangible benefits, in this case or generally.

7. The WGC opposes any such suggestion. Tangible benefits are engaged when independent actors—usually, private business people engaging in commercial activity for the purposes of generating profits for themselves and/or their shareholders—voluntarily undertake to change the ownership or effective control of one or more broadcasting assets in pursuit of financial gain. As businesspeople, they take a calculated risk that their actions will pay off in terms of profits and value of the business. Tangible benefits are part of that calculation. If their calculations are correct, they reap the benefits of their decision, which includes an increase in the value of their broadcasting assets. In such cases, the valuation of those assets for the purposes of tangible benefits does not retroactively increase. The benefit of that increase in value goes to the owner(s). If tangible benefits do not increase retroactively when the value of the assets increases, they should not decrease retroactively when that value decreases, however unfortunate that decrease may be. Valuation is done at the time of the (voluntary) transaction—it should not be revisited simply because the applicant's market bet does not pay off for them.

8. Finally, Stingray points to the growth of online, Internet-based music options and states that its "pay audio service has also seen a dramatic reduction in subscribers as Canadians turn to unregulated music options like Spotify and Apple Music."[4] This is part of an industry-wide structural shift of which the WGC, among many others, is very aware. This broader structural issue, however, is best dealt with through a broader structural process, such as the one expected to come from an amended *Broadcasting Act*, promised in the Liberal Party of Canada's most recent election platform and widely expected to be tabled early this year. Alternatively, the Commission could examine these issues under existing legislation though a wider policy proceeding. In either event, however, we submit that it is

[2] E.g. Broadcasting Regulatory Policy CRTC 2014-459.
[3] Application, para. 5.
[4] Application, para. 4.

not appropriate to address them in an *ad hoc* manner, such as through reducing existing tangible benefits packages via applications such as the present one from Stingray.

9. We thank the Commission for the opportunity to participate in this proceeding.

Yours very truly,

Maureen Parker
Executive Director

c.c.: Kevin J. Goldstein, Counsel to Stingray (kevin@goldsteincommunicationslaw.com)

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