Writers Guild of Canada

March 18, 2025 **Filed Electronically**

Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau, Quebec
K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2025-48: NBA TV (Canada) Transaction

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 and Indigenous programming.

2. As stated in the Notice of Consultation for this proceeding, this is an application from Rogers Communications Inc. (Rogers) to acquire control of the service NBA TV (Canada) from BCE Inc. (BCE). Rogers proposed a tangible benefits package of $3,710,952, which represents 10% of the proposed value of the transaction ($37,109,518) for the discretionary television service NBA TV (Canada). Rogers proposed to direct 48% of the tangible benefits to the Canada Media Fund (CMF) and 32% of the tangible benefits to the Rogers Documentary and Cable Network Fund, a certified independent production fund (CIPF). Neither the Notice of Consultation nor the application documents mention the language of the initiatives to be funded through the CMF or CIPF in relation to the transaction.

3. The WGC's comments in this proceeding focus on how tangible benefits monies administered by the CMF and/or CIPFs should be allocated with respect to language markets, both in this transaction and in a consistent manner across transactions in which benefits are payable. We submit that such tangible benefits monies should be allocated in a way that is fair and consistent with respect to language. The WGC opposes a result in which benefits monies are allocated between language markets across multiple transactions in an arbitrary manner, sometimes being disbursed by funders to one language market only in one transaction, and sometimes split between both markets in another transaction, based on arbitrary factors such as whether the applicant specifies the target language market for the benefits in their application or not. The WGC has submitted numerous comments on this issue to the Commission in the past in respect of numerous tangible benefits packages, yet there still appears to be unfairness and/or inconsistency in how it has been addressed by the Commission.

4. 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]

5. 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]

6. 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, 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]

7. 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-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 in 2014 appeared to have moved from a system in which tangible benefits "stay

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[1] Broadcasting Regulatory Policy 2014-459, para. 24.
[2] Broadcasting Regulatory Policy 2014-459, para. 1. Emphasis added.
[3] Broadcasting Decision CRTC 2013-310, 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.

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.

8. Since then, however, the Commission has issued decisions that derogate from this approach in an apparently inconsistent and unprincipled way, and which has created structural unfairness in the application of the Policy. The Commission was or should have been aware of this issue at the time it created the 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] The WGC has also raised the issue in Broadcasting Notice of Consultation CRTC 2018-95: Application 2017-1060-9 (Bell/Corus-Historia/Series+),[7] and again in Broadcasting Notice of Consultation CRTC 2019-358, Application 2019-0648-9: Bell Canada, on behalf of V Interactions inc. (Bell-V Interactions).[8] From our point of view, then, the WGC has now raised this issue multiple times in multiple proceedings, yet it appears to have remained unaddressed in the subsequent Commission decisions. Moreover, as described in great detail below, a number of notable English-market transactions have been split by the CMF's one-thirds/two-thirds French/English formula, while a number of notable French-market transactions have been directed entirely to French-language programming. This is obviously unfair and inconsistent.

9. 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.[9] 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 applying 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.

10. Unfortunately, however, this approach was not consistently followed, and there have since been a number of transactions under the current 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 dedicated to one language market or another, and therefore presumably were subjected to the CMF's standard, one-third/two-thirds formula:

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[6] Submission of the WGC to Broadcasting Notice of Consultation CRTC 2013-558 (https://www.wgc.ca/sites/default/files/resource/2018-09/WGC%20on%20Tangible%20Benefits%20Review%20%28jan13%29.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] Broadcasting Notice of Consultation CRTC 2019-358, Application 2019-0648-9, (https://www.wgc.ca/sites/default/files/resource/2019-11/WGC.CRTC_.9.28.19.pdf).

[9] Submission of the WGC to Broadcasting Notice of Consultation CRTC 2013-558 (https://www.wgc.ca/sites/default/files/resource/2018-09/WGC%20on%20Tangible%20Benefits%20Review%20%28jan13%29.pdf), para. 12.

- 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)
- Movieola (Broadcasting Decision CRTC 2014-421)

11. 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."[10] 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."[11] 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."[12] 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.

12. Similarly, in Broadcasting Decision CRTC 2022-76: Shaw Communications Inc. – Change of ownership and effective control (Shaw-Rogers), worth a total of $27,233,885 in tangible benefits, the Commission required Rogers to file a signed agreement with the CMF attesting that the tangible benefits to be directed to the CMF pursuant to this transaction will be allocated to the CMF's pilot program for racialized communities and its Northern Incentive Program.[13] Our understanding is that the pilot program for racialized communities, at least, would have been split according to the one-third/two-thirds formula.

13. By contrast to the above, in the application by Quebecor Media Inc. (Quebecor) to acquire French-language discretionary services Zeste and Évasion, the Commission noted that its

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[10] 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.
[11] Broadcasting Decision CRTC 2018-230, para. 51.
[12] Broadcasting Decision CRTC 2014-421, para. 34.
[13] Broadcasting Decision CRTC 2022-76, para. 63.

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."[14] 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.[15] And again, in Bell-V Interactions, Bell proposed to devote all of the tangible benefits to French-language original programming initiatives, and again the Commission agreed.[16]

14. The cumulative effect of all these decisions has been that a number of notable English-market transactions have been split by the CMF's one-thirds/two-thirds French/English formula, while a number of notable French-market transactions have been directed entirely to French-language programming. Splitting English-language transactions between English- and French-language programming and initiatives, while directing the entirety of French-language transactions to French-language programming and initiatives is obviously unfair and inconsistent.

15. The WGC submits that the Commission—or the Commission in cooperation with the CMF, CIPFs, and/or the Department of Canadian Heritage—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 across all transactions. It should not be the case that when an applicant specifically requests that most or all tangible benefits be directed to a particular market, then the monies will be so directed, but if the applicant neglects to so specify, then the monies will be split according to 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. And it *certainly* shouldn't be the case that, on balance, English-language benefits are split between language markets while French-language benefits are directed entirely to the French market. We submit that such a practice would be unfair and inconsistent, and therefore not in the public interest.

16. Based on the current context, in this proceeding now before the Commission, the WGC now makes 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 is effectively now necessary to maintain fairness in light of the Commission's decisions in Zeste/Évasion and Bell-V Interactions. As such, 100% of the tangible benefits associated with the NBA TV (Canada) transaction should be directed to English-language initiatives. This approach is 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". It would also be consistent with the precedents that the Commission has now set in the above-noted French-language transactions.

17. We thank the Commission for the opportunity to provide these written comments.

[14] Broadcasting Decision CRTC 2019-6, *Zeste and Évasion – Change in ownership and effective control*, para. 42.
[15] *Ibid.*, para. 44.
[16] Broadcasting Decision CRTC 2020-154, para. 179.

Yours very truly,

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