



## Broadcasting Decision CRTC 2013-310

PDF version

Route reference: 2013-106

Additional reference: 2013-106-1

Ottawa, 27 June 2013

### **Astral Media inc. and its licensed subsidiaries** Across Canada

*Application 2013-0244-7, received 31 January 2013*

*Public hearing in Montréal, Quebec*

*6 May 2013*

### **Astral broadcasting undertakings – Change of effective control**

*The Commission **approves**, subject to certain modifications, an application by Astral Media inc. (Astral) and its licensed broadcasting subsidiaries for authority to change the effective control of Astral's broadcasting undertakings to BCE Inc. The Commission concludes that the transaction as modified by the Commission is in the public interest and advances the objectives set out for the Canadian broadcasting system in the Broadcasting Act.*

*In approving this application, the Commission has imposed specific measures to ensure that the transaction benefits Canadians and the Canadian broadcasting system.*

*As part of the tangible benefits resulting from this transaction, BCE must invest \$246.9 million over the next seven years on initiatives that will provide Canadians with a range of programming choices, and Canadian creators with increased opportunities to showcase their talent. These funds are equivalent to 10% of the value of the television services and 7% of the value of the radio services involved in the transaction.*

*Specifically, BCE must spend \$175.4 million on the following initiatives relating to the television sector:*

- *programs of national interest in the English- and French- languages;*
  - *all programs of national interest will be original and produced by independent producers;*
  - *10% of the funding allocated to this initiative will be dedicated to official language minority communities' production in each language market;*
- *youth programming in the English- and French- languages;*

- *the Harold Greenberg Fund and Telefilm Canada;*
- *initiatives related to the promotion of Canadian content in a multiplatform world, including media training programs; and*
- *the Canadian Broadcasting Fund and the Canadian Broadcast Standards Council.*

*Further, BCE must spend \$71.5 million on the following initiatives relating to the radio sector:*

- *Radio Starmaker or Fonds Radiostar;*
- *FACTOR or MUSICACTION;*
- *the Community Radio Fund of Canada; and*
- *discretionary Canadian content development initiatives, with an emphasis on the direct support of Canadian artists, including emerging artists, and the production by independent parties of new spoken word content devoted to the promotion of Canadian artists, including emerging artists.*

*BCE must divest itself of the following Astral television services: The Family Channel, TELETOON Retro, TÉLÉTOON Rétro, TELETOON/TÉLÉTOON, Disney XD, Disney Junior, Cartoon Network, Historia, Séries+, MusiquePlus and MusiMax.*

*Further, BCE must divest itself of the following Astral radio services: CHHR-FM Vancouver, CKZZ-FM Vancouver, CISL Vancouver, CFQX-FM Selkirk, CHBM-FM Toronto, CKQB-FM Ottawa-Gatineau and CJOT-FM Ottawa-Gatineau and the following BCE radio services: CKCE-FM Calgary, CHIQ-FM Winnipeg and CFJX-FM Toronto.*

*The Commission authorizes BCE, under certain conditions, to acquire Astral's three English-language stations, namely CJAD, CHOM-FM and CJFM-FM Montréal, and requires that it continue to operate CKGM Montréal. The Commission finds that it would be contrary to the public interest to separate the ownership of these three stations. BCE must submit an application to amend the broadcasting licence for CKGM in order to add a condition of licence that ensures that CKGM maintains its sports format. BCE must also devote \$245,000 over the next seven broadcast years to initiatives that will benefit the radio sector, with an emphasis on emerging artists from Montréal's English-language minority community.*

*The Commission acknowledges the concerns raised by interveners over the impact of the transaction on competition, ownership concentration in television and radio, vertical integration and the exercise of market power. In response, the Commission is putting in place significant safeguards to ensure a continued dynamic marketplace. Specifically, the Commission imposes **conditions of approval** requiring, among other things, that:*

- *relevant sections of the Code of conduct for commercial arrangements and interactions be imposed as conditions of licence on all of BCE's programming services and television distribution services;*
- *all BCE-owned radio stations provide commercially reasonable access to advertising opportunities to all competitors;*
- *BCE file all of its affiliation agreements in order to provide the Commission with sufficient information to monitor BCE's programming and distribution arrangements; and*
- *BCE enter into dispute resolution if an affiliation agreement is not reached 120 days before the expiry date of the existing agreement.*

*The Commission finds that but for these safeguards and BCE's commitment to the continued operation of all of its conventional stations as well as those acquired from Astral, it would not have been persuaded that the present transaction is in the public interest and would not have approved it. Because of these changes, Canadians can be assured that the necessary steps are being taken to foster a healthy and competitive broadcasting system.*

## **THE APPLICATION**

1. On 31 January 2013, Astral Media inc. (Astral) and its licensed broadcasting subsidiaries filed an application requesting authority to change the effective control of Astral's broadcasting undertakings to BCE Inc. (BCE), pursuant to section 11(4) of the *Radio Regulations, 1986* (the Radio Regulations), section 14(4) of the *Television Broadcasting Regulations, 1987* (the Television Broadcasting Regulations), section 6(4) of the *Pay Television Regulations, 1990* (the Pay Television Regulations), and section 10(4) of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations). The transaction would be carried out by the direct and indirect acquisition of all outstanding shares of Astral by BCE and BCE Subco, a wholly owned subsidiary of BCE to be incorporated. The Commission addresses the corporate reorganizations in Broadcasting Decision 2013-308 and 2013-309, and in a letter decision also issued today.
2. In connection with the proposed transaction, Astral filed, on its behalf and on behalf of BCE and certain of their respective licensed subsidiaries, applications for authority to effect corporate reorganizations. Astral indicated that these applications were contingent on approval of the proposed transaction, and would precede the closing of this transaction.
3. The applicant, on behalf of BCE, proposed the payment of tangible benefits totalling \$174.6 million, and proposed a number of intangible benefits to the Canadian broadcasting system, as outlined below.

4. As part of the transaction, BCE would divest itself of eleven television services and ten radio services. Specifically, BCE would divest itself of the following television services purchased from Astral: The Family Channel, TELETOON Retro, TÉLÉTOON Rétro, TELETOON/TÉLÉTOON, Disney XD, Disney Junior, Cartoon Network, Historia, Séries+, MusiquePlus and MusiMax. Further, it would divest itself of the following radio services purchased from Astral: CHHR-FM Vancouver, CKZZ-FM Vancouver, CISL Vancouver, CFQX-FM Selkirk, CHBM-FM Toronto, CKQB-FM Ottawa-Gatineau and CJOT-FM Ottawa-Gatineau. BCE also proposed to divest itself of the following radio services that it currently owns: CKCE-FM Calgary, CHIQ-FM Winnipeg and CFJX-FM Toronto.
5. In the application, Astral, on behalf of Bell Media Canada Radio Partnership (Bell Media), requested an exception to the Commission's Common Ownership Policy in Montréal in order to be permitted to operate four English-language radio programming undertakings in that market. This policy is set out in Public Notice 1998-41 (the 1998 Commercial Radio Policy).

## **BACKGROUND**

6. Astral is Canada's largest radio broadcaster, with 84 stations in eight provinces. It is also a major provider of premium content and specialty television in Canada, with significant ownership interests in 20 popular English- and French-language discretionary services. Astral also operates two conventional English-language television stations (CJDC-TV Dawson Creek and CFTK-TV Terrace, British Columbia), which are both affiliates of the Canadian Broadcasting Corporation.
7. In Broadcasting Decision 2012-574, the Commission denied an application by BCE, on behalf of Astral, for authority to change the effective control of Astral's broadcasting undertakings. In that decision, the Commission considered the potential impacts on and the proposed benefits of the transaction for the Canadian broadcasting system, and concluded that BCE had not demonstrated that the application was in the public interest.
8. Substantial concerns were raised in regard to that application over the impacts on the Canadian broadcasting system relating to competition, ownership concentration in television and radio, vertical integration (VI) and the exercise of market power. The Commission noted that a distributor with the content properties of the then proposed combined BCE/Astral could exert market power in an anti-competitive fashion by restricting access to its programming services or by offering them at above market rates to its competitors; threaten the availability of diverse programming for Canadians; and endanger the ability of distribution undertakings to deliver programming at affordable rates and on reasonable terms on multiple platforms.

9. The Commission also noted that while BCE had agreed to accept the Code of conduct for commercial arrangements and interactions<sup>1</sup> (the VI code of conduct) as a condition of licence, it did not propose or clearly accept any other possible remedies to address these concerns, including functional separation or divestiture. The Commission considered that BCE's level of market power would have been so significant that its framework for VI<sup>2</sup> (the VI framework) would have been insufficient to effectively address disputes and facilitate program availability and distribution.
10. The Commission also stated that it was not persuaded that the transaction would provide, to both the Canadian broadcasting system and Canadians, significant and unequivocal benefits sufficient to outweigh concerns noted in paragraph 8. The Commission found that although the tangible benefits package proposed by BCE would have resulted in significant investment in the Canadian broadcasting system, certain initiatives fell outside the guidelines established by Commission policy and general practice. Further, the proposed tangible benefits package did not satisfy the expectation that 85% of benefits be directed to on-screen initiatives. The Commission also noted that BCE had made no firm commitments in regard to intangible benefits relating to radio. In relation to intangible benefits for television, the Commission found that BCE did not adequately demonstrate that its acquisition of Astral was a prerequisite for a new multiplatform on-demand service.

## **PUBLIC PROCESS**

11. Section 11(4) of the Radio Regulations, section 14(4) of the Television Broadcasting Regulations, section 6(4) of the Pay Television Regulations, and section 10(4) of the Specialty Services Regulations require a licensee to obtain prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change, by whatever means, of the effective control of its undertaking. Such prior approval is also required where persons wish to acquire or increase their holdings in broadcasting licensees above certain thresholds, even if those licensees form part of a larger unlicensed commercial enterprise.
12. In many instances, such applications for approval are subject to a public process, which in turn informs the Commission in its decision making. The Commission's approach to processing applications for changes of effective control was restated in Broadcasting Information Bulletin 2008-8-1. Consistent with the approach outlined in that information bulletin, the Commission published the relevant applications for public comment in Broadcasting Notice of Consultation 2013-106.

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<sup>1</sup> See Broadcasting Regulatory Policy 2011-601-1.

<sup>2</sup> See Broadcasting Regulatory Policy 2011-601 as amended by 2011-601-1.

13. The Commission received more than 800 interventions, supporting, commenting on and opposing the transaction. These interventions were from broadcasters, distributors, independent producers and creative groups, and citizen and consumer advocacy groups, as well as individual Canadians from all parts of Canada. The Commission also received two petitions, one signed by more than 15,000 individuals in support of the requested exception to the Common Ownership Policy, the other signed by more than 1,000 individuals in support of the transaction, including the above-noted exception.
14. The Commission held an oral public hearing from 6-10 May 2013 in Montréal to hear the application. The applicant, BCE and more than 30 interveners appeared. The complete public record for this application, including the transcript of the oral phase of the hearing, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings." In its analysis, the Commission has considered the entire record of this proceeding.

## **REGULATORY FRAMEWORK**

15. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction, and that the application represents the best possible proposal in the circumstances. This analysis is of particular importance when dealing with a large transaction that has the potential to reshape the Canadian broadcasting system.
16. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives of the Act and will not impede the ability or willingness of the licensee to meet its obligations under the Act. These obligations include those that arise from conditions of licence, regulations, or directions made by the Governor in Council pursuant to the Act.

## **THE PUBLIC INTEREST**

17. Pursuant to section 5(1) of the Act, the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. The public interest is reflected in the numerous objectives of the Act and of the Canadian broadcasting policy set out in section 3(1). For the present ownership transaction, relevant Canadian broadcasting policy provisions include the following:
  - the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements,

makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty; [section 3(1)(b)]

- English- and French-language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements; [section 3(1)(c)]
- the Canadian broadcasting system should
  - serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada, [section 3(1)(d)(i)], and
  - encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view; [section 3(1)(d)(ii)]
- the programming provided by the Canadian broadcasting system should (i) be varied and comprehensive...(ii) be drawn from local, regional, national and international sources...(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and (v) include a significant contribution from the Canadian independent production sector. [section 3(1)(l)(i)]

18. In addition, since this transaction raised concerns regarding access to programming services offered by distribution undertakings, the Commission considered sections 3(1)(t)(ii) and 3(1)(t)(iii) of the Act. These provisions provide that distribution undertakings:

- should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost [section 3(1)(t)(ii)], and
- should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services. [section 3(1)(t)(iii)]

19. In the course of implementing the broadcasting policy, the Commission must have regard to the regulatory policy set out in section 5(2) of the Act. That regulatory policy provides, among other things, that the Canadian broadcasting system must be regulated and supervised in a flexible manner that facilitates the provision of broadcasting to Canadians and is sensitive to the administrative burden that may be imposed on persons carrying on broadcasting undertakings.

20. In ownership applications involving television and radio undertakings, applicants must demonstrate that the transaction would yield significant and unequivocal benefits for the Canadian broadcasting system. This objective is articulated in the Commission's tangible benefits policy (see Public Notice 1999-97 for television; for radio, see the 1998 Commercial Radio Policy and Broadcasting Public Notice 2006-158 (the 2006 Commercial Radio Policy), which established that contributions proposed as tangible benefits should represent a certain percentage of the value of the transaction as a substitute for a competitive licensing process.
21. The Commission's decision on whether a proposed transaction is in the public interest takes into account a wide set of factors as reflected in the Act, including the nature of programming and service to the communities involved, as well as regional, social, cultural, economic and financial considerations. Therefore, an appropriate tangible benefits package is only part of the applicant's obligation to demonstrate that the transaction is in the public interest. In rendering a decision, the Commission must be persuaded that the proposed transaction benefits Canadians and their broadcasting system.

## **COMMISSION'S ANALYSIS AND DECISIONS**

22. The applicant and BCE submitted that the proposed transaction would provide Canadians with enhanced programming that responds to their needs and expectations. They further submitted that the transaction would allow the combined entity to use its significant resources to create and promote more Canadian programming, more local coverage and more support for Canadian creators and artists. They also proposed a series of safeguards to address the potential for anti-competitive behaviour.
23. Interveners were divided on the appropriateness of the proposed transaction. Many individual Canadians and creative groups either wrote submissions or signed petitions supporting the transaction, noting the benefits that a combined BCE/Astral could bring to the creation of Canadian content and to the Canadian broadcasting system. Broadcasting distribution undertakings (BDUs), with the exception of Shaw Communications Inc. (Shaw), were generally opposed to the transaction and called for significant additional safeguards to be imposed in the event of Commission approval.
24. The Commission, after considering the complete public record of this proceeding, determines that the present transaction, as modified in this decision, is in the public interest.
25. The Commission is aware of the benefits of consolidation and scale as these can facilitate the creation of diverse, relevant high-quality Canadian programming and its distribution through conventional and digital media distribution channels. The Commission seeks to ensure, however, that increased consolidation and scale do not jeopardize the diversity and competitive balance in the Canadian broadcasting system.



26. The Commission notes that in this transaction, BCE, on behalf of the applicant and the combined BCE/Astral, proposed safeguards against anti-competitive behaviour. Most notably, these include structural safeguards in the form of significant divestitures in English- and French-language television and radio, and behavioural safeguards including having provisions of the VI code of conduct imposed as conditions of licence. The Commission has accepted many of BCE's proposals, and has determined that additional safeguards are necessary and will be imposed, as outlined below.
27. The Commission considers that these safeguards are necessary for the implementation of the broadcasting policy set out in section 3(1) of the Act. They will ensure that Canadians receive the benefits of a large, vertically integrated company creating and distributing programming, while at the same time facilitate the provision and distribution of a wide range of varied and comprehensive programming on reasonable terms.
28. The Commission finds that but for these safeguards, it would not have been persuaded that the present transaction is in the public interest, and would not have approved it.
29. The Commission further considers that the benefits package proposed by the applicant, with the modifications by the Commission outlined below, will make a significant contribution to Canadians and the Canadian broadcasting system, in particular with respect to the creation and promotion of Canadian programming. The Commission accepts the applicant's argument that the transaction will facilitate the distribution of content on multiple platforms, thereby benefitting Canadian viewers. The Commission considers that consumers in the French-language market will benefit from a renewed competitive landscape. In addition, the Commission is of the view that Canadian creators will benefit from this transaction, in particular due to the tangible benefits package, as discussed below.
30. The Commission's decision that the proposed transaction, with the modifications discussed below, is in the public interest is based on an assessment of the transaction in light of the regulatory framework set out above. In this regard, the Commission, in its examination of the proposed transaction, focussed on the following two issues:
  - potential impacts on the Canadian broadcasting system; and
  - proposed benefits of the transaction for the Canadian broadcasting system.

### **Potential impacts on the Canadian broadcasting system**

31. In regard to potential impacts on the Canadian broadcasting system, the Commission has considered the following:
  - concentration of ownership – television:

- diversity of voices;
- VI and remedies against anti-competitive behaviours;
- other issues relating to television:
  - the status of CJDC-TV and CFTK-TV, and of other conventional television stations;
  - terms of trade agreements;
  - impact on independent production;
- concentration of ownership – radio:
  - Common Ownership Policy – divestitures; and
  - Common Ownership Policy – exception for the Montréal radio market.

**Concentration of ownership – television: Diversity of voices**

32. In the diversity of voices policy (see Broadcasting Public Notice 2008-4), the Commission established that, as a general rule, it would not approve applications for a change in effective control of broadcasting undertakings that would result in the control, by one person, of a dominant position in the delivery of television services to Canadians that would have an impact on the diversity of programming available to television audiences.
33. Barring other policy concerns, transactions resulting in one person controlling less than 35% of the total television audience share (measured separately, on a national basis, for both English- and French-language markets) would be processed expeditiously. However, the Commission would carefully examine transactions where one person controlled between 35% and 45% of the total television audience share.
34. The thresholds set out in the diversity of voices policy are intended to help guide the Commission’s analysis of horizontal media consolidation when reviewing applications for changes in effective control – they are not determinative of the outcome of Commission deliberations.
35. In considering the total audience share, in Broadcasting Decision 2012-574, the Commission considered that, in the case of the joint ventures, even in the absence of clear cut control, it would be unreasonable to separate a 50% ownership position from the significant role in the operation and management of the services that such a party would possess, and that it would include such viewing shares. The Commission also considered that total television share is based on viewing to Canadian commercial television services. The Commission also stated that it

would consider other indicators of market power, competition and ownership concentration given the size and nature of the proposed transaction.

36. In addition to these quantitative thresholds, the Commission set out several qualitative criteria, in paragraph 89 of the diversity of voices policy, to be used when assessing a proposed transaction.

#### ***Position of Astral and BCE***

37. Astral and BCE stated that the proposed divestitures would significantly reduce the combined BCE/Astral's position in terms of market shares in English- and French-language markets, making six<sup>3</sup> of its current thirteen Category A services available to other licensees, and resulting in BCE/Astral no longer operating services in the genres of music and animation. They noted that in the French-language market, revenue shares from Category A services would be reduced from 85% to 60% with the proposed divestitures, which it described as considerable.
38. Astral and BCE also argued that the main opposition came from large profitable BDU competitors, who expressed the desire to secure content at below fair market cost.

#### ***Interventions***

39. TELUS Communications Company (TELUS) and Cogeco Cable Inc. (Cogeco) submitted that the diversity of voices policy might not be as relevant in today's environment as it was in the past. Noting that the policy was established with horizontal rather than vertical integration in mind, they argued that it should not be taken into consideration. Cogeco added that the diversity of voices policy provides a perspective, but is not an absolute direction.
40. Rogers Communications Inc. (Rogers) stated that BCE should, in regard to the English-language market, divest itself of all of Astral's English-language discretionary television services. In particular, in addition to those services included in the applicant's divestiture proposal, Rogers submitted that the Commission should require BCE to divest itself of The Movie Network (TMN), TMN Encore and its share in the pay-per-view service Viewer's Choice Canada. It stated that while it supports VI as a concept, there comes a point where it is too much. Rogers submitted that the acquisition of these properties by another VI entity would not create the same concerns, as other VI players (with smaller portfolios) do not have the same tools or incentives to behave in an anti-competitive manner.

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<sup>3</sup> The Family Channel, TELETOON, MusiquePlus, MusiMax, Séries+, Historia

41. On-screen Manitoba argued that BCE's acquisition of Astral would reduce the diversity of voices, and that independent producers would not have the means to overcome this.
42. PIAC et al.<sup>4</sup> submitted that the proposed transaction would reduce the diversity of voices, threaten competition and most likely result in higher prices and reduced choice. They further argued that although consumers have access to a variety of media outlets, they do not benefit from a diversity of voices because a small number of players own those outlets. In their view, the current level of competition is insufficient to protect consumers, and neither VI nor the presence of over-the-top services have as of yet resulted in lower prices.
43. PIAC et al. further stated that consumers in the French-language market currently enjoy more flexibility and choice than their counterparts in the English-language market. They argued that BCE's acquisition of Astral would grant it control over the majority of the valuable Category A services and eliminate an independent broadcaster, and that BCE/Astral would therefore be in a position to put pressure on its competitors to decrease packaging flexibility and choice of services. In their view, approving the transaction would essentially establish a duopoly in the market.
44. Quebecor Media Inc.<sup>5</sup> (Quebecor) submitted that BCE/Astral's position in the market would enable it to control content rights (especially for sports programming and movies), royalties and the advertising market. It argued that this would also allow it to practise advertising "dumping" (i.e., negotiating advertising on all platforms in order to be able to offer advertising bundles at lower costs) on its French-language specialty services, thereby minimizing the value of the advertising inventory of other players.

***Commission's analysis and decisions***

45. In regard to the English-language market, the combined BCE/Astral television audience viewing share excluding the proposed divested services totalled 35.8% in 2012, which falls just within the 35% to 45% tuning threshold within which the Commission has stated that it will carefully examine the impact of the transaction on the broadcasting system. In regard to the French-language market, the combined BCE/Astral television audience viewing share would be 22.6%, which is well below the 35% threshold. Nevertheless, BCE/Astral would become one of the largest broadcasters, in terms of audience share, in both the English- and French-language markets.

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<sup>4</sup> The Public Interest Advocacy Centre, the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners and Senior Citizens Federation, and Option consommateurs

<sup>5</sup> On behalf of itself and on behalf of Videotron G.P. and TVA Group Inc.

46. The Commission considers that the proposed transaction would lead to significant concentration in the Canadian broadcasting system. Category A services constitute particularly valuable assets given that BDUs are required, pursuant to the regulatory framework for discretionary services, to distribute them in their respective markets. The Commission notes, however, that the applicant proposed significant divestitures resulting in a reduction in the level of concentration when compared to those proposed in the transaction denied in Broadcasting Decision 2012-574. In that decision, the proposed transaction would have resulted in an audience viewing share of 42.7% in the English-language television market and an audience viewing share of 33.1% in the French-language television market.<sup>6</sup> The Commission notes in particular that in the English-language market, BCE's total viewing share would increase by only 1.8% from its current level.<sup>7</sup> As noted above, the combined BCE/Astral's audience share in the French-language market would be well below the 35% threshold set out in the diversity of voices policy and would place it second to Quebecor in that market.
47. Accordingly, the Commission finds that Astral's proposed divestitures would bring the combined BCE/Astral to an acceptable level of concentration from a diversity of voices standpoint. The Commission notes that BCE has filed an application for a voting trust agreement whereby the voting shares of the broadcasting assets proposed for divestiture would be controlled by a trustee pending their sale to third parties.
48. In light of the above, the Commission **directs** BCE, as a **condition of approval**,<sup>8</sup> to transfer the interim management and control of the television programming undertakings identified in paragraph 4 above to a trustee pursuant to the terms of the voting trust agreement addressed in a letter of approval also issued today, by no later than **29 July 2013**.
49. Notwithstanding the above-noted divestitures, the Commission notes concerns expressed by interveners over BCE's ability to give itself a preference or to subject a party to an undue disadvantage, particularly given its control over certain Category A and premium services and its position as a vertically integrated entity. In the next sections, the Commission examines various safeguards relating to fair access to programming, terms of trade and digital platforms, to address these concerns.

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<sup>6</sup> These percentages are based on 2011 audience share data.

<sup>7</sup> This percentage is based on 2012 audience share data.

<sup>8</sup> For ease of reference, a list of the conditions of approval imposed throughout this decision is set out in Appendix 1.

**Concentration of ownership – television: Vertical integration and remedies against anti-competitive behaviours**

50. The Commission articulated its VI framework in September 2011 (see Broadcasting Regulatory Policy 2011-601 as amended by 2011-601-1) and implemented that framework via amendments to various regulations (Broadcasting Regulatory Policy 2012-407) and to the exemption orders for digital media broadcasting undertakings (the Digital Media Exemption Order; see Broadcasting Order 2012-409) and terrestrial BDUs serving fewer than 20,000 subscribers (Broadcasting Order 2012-408). Among other things, the VI framework established the VI code of conduct.
51. One of the key objectives of the VI framework is to ensure that Canadians continue to benefit from a wide choice of programming and are provided with more flexibility in the services to which they can subscribe. The framework is also designed to limit potential abuses of market power and to ensure fair treatment for independent BDUs and programming services. In the VI framework, the Commission acknowledged the increased potential for preferential treatment but expressed the view that VI can also lead to benefits, such as cost savings and increased efficiencies.

***Position of Astral and BCE***

52. Astral and BCE submitted that the current regulatory framework, combined with some proposed additional behavioural safeguards, would be more than sufficient to address any concerns over anti-competitive behaviour. Accordingly, they proposed various safeguards in the application and at various stages of the proceeding.
53. First, they proposed to apply for a general condition of licence requiring adherence to the VI code of conduct, which sets out general objectives and guidelines for wholesale commercial arrangements. BCE later submitted a list of specific conditions of licence incorporating elements of the code that it would accept as binding conditions.
54. BCE expressed the view that the application of these specific conditions of licence should be limited to its commercial interactions with licensed or exempt BDUs having fewer than 500,000 total subscribers. BCE also argued that there was no need to impose additional safeguards on its BDUs since the proposed transaction would have no impact on its market share in distribution, and stated that 2 BDUs are at most only the second largest in any given market.
55. Second, BCE stated that it was prepared to commit to expand the prohibition on tied selling regarding the carriage of multiple services by accepting conditions of licence to that effect.

56. Finally, BCE agreed to the addition of a requirement relating to the negotiation of non-linear rights at the same time as linear rights, and of a requirement to provide a 90-day notice of the impending launch of a new programming service.

### **Interventions**

57. Many interveners argued that the proposed divestitures and safeguards would have little or no impact on the significant market power that BCE would acquire if the transaction were approved. In their view, the application does not address the concerns expressed by the Commission in Broadcasting Decision 2012-574, and that it should therefore be denied.
58. With the exception of Shaw, all of the intervening BDUs<sup>9</sup> opposed the transaction. Some argued that approval of the transaction would put BCE/Astral in a position to use its dominant market position to impose unreasonable terms and conditions on the carriage of its programming services, which would make it impossible for the BDUs to offer flexible packaging options to their subscribers.
59. Of particular concern to the BDUs was the fact that the proposed transaction would give BCE/Astral control over premium content and several Category A services. BDUs argued that BCE/Astral would then control multiple channels that distributors must carry, whether for regulatory or competitive reasons.
60. Many BDUs also expressed concern over BCE's practices relating to digital media and other multiplatform rights. Several BDUs stated that BCE refuses to negotiate such rights along with the linear rights while providing its own mobile and Internet services with access to programming, thereby according to themselves an advantage. Others stated that when BCE does make such rights available to competing distributors, it proposes terms so unreasonable that it basically amounts to refusing to make the rights available. Some distributors submitted that, for the above-noted reasons, BCE is the only large programming service provider with which they still have no commercial agreement regarding non-linear rights.
61. Opposing interveners also expressed the view that current safeguards, even when combined with BCE/Astral's proposed additional safeguards, would not be sufficient to prevent BCE from abusing its market power. Many argued that the current VI framework relies too much on measures that are implemented after the fact (*ex post* measures), and that smaller and/or independent players are reluctant

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<sup>9</sup> Askivision Systems Inc., Astrocom Cablevision Inc., Cable Cable Inc., the Canadian Cable Systems Alliance Inc., Cogeco Cable Inc., Conuma Cable Systems Ltd., Coopérative de câblodistribution de l'arrière-pays, Bragg Communications Inc., operating as Eastlink, Execulink Telecom Inc., Gosfield North Communications Co-Operative Limited, Hay Communications Co-op, MTS Allstream, Nexicom Communications Inc., Novus Entertainment Inc., Rogers Communications Inc., Seaside Communications Inc., Source Cable Limited, South Island Cable, Télédistribution Amos Inc., TELUS, Vidéotron G.P. and Wightman Telecom Ltd.

to use such *ex post* measures, such as dispute resolution. They argued that such measures are resource-intensive, can cause long delays and can lead to retaliation from larger players.

62. Conversely, Shaw agreed with BCE/Astral that all concerns regarding concentration of ownership are more than adequately addressed by the current VI framework and by the remedies proposed by Astral and BCE. Shaw, Corus Entertainment Inc. (Corus) and Stingray Digital Group Inc. noted that Canada needs strong players to compete effectively in the borderless digital media environment.
63. Although most opposing interveners considered that the application should be denied, some proposed safeguards to address these concerns in the event the Commission approves the transaction. These safeguards included, but were not limited to, the imposition of an enhanced “no head start rule”<sup>10</sup> on digital media, requirements relating to access to advertising availabilities, the prohibition of exclusivity agreements when pay television services acquire content, improvements to the Commission’s dispute resolution processes, and the elimination of genre protection.

#### ***Commission’s analysis and decisions***

64. Notwithstanding the benefits that can result from VI and consolidation, the Commission considers that factors such as convergence, integration and scale may lead to an entity becoming so large that it is provided with the opportunity and incentive to give itself or others an undue preference. This could impede the efficient delivery of programming at affordable rates and reasonable terms of carriage and ultimately work against a competitive and dynamic marketplace in the Canadian broadcasting system. This could also have consequences on the availability and diversity of programming for Canadians.
65. In the present proceeding, BCE and Astral have proposed a number of safeguards to limit potential anti-competitive behaviour. These include adherence to the provisions of the VI code of conduct as conditions of licence, additional conditions of licence relating to the prohibition on tied selling, requirements relating to the negotiation of the non-linear rights at the same time as linear rights, and a 90-day notice of the impending launch of a new programming service.

The VI code of conduct as conditions of licence

66. In regard to BCE’s position that there was no need to impose additional safeguards on its BDUs, the Commission acknowledges that the proposed transaction would have no immediate impact on BCE’s market share in

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<sup>10</sup> The term “head start” refers to situations where a programming service is launched on a BDU’s distribution platform prior to the service having been made available for distribution to other BDUs on commercially reasonable terms.



distribution. The Commission nevertheless considers that consolidation provides the whole entity (i.e., both programming and distribution undertakings) with greater opportunity and more incentive to act in an anti-competitive manner. In this case, the acquisition of Astral's undertakings would provide BCE's distribution arm with less incentive to carry unrelated programming services and therefore more leverage in carriage negotiations in respect of unrelated services. For this reason, the Commission considers that it would be appropriate to impose additional safeguards to BCE's BDUs, as well as to its programming services.

67. The Commission also considers that it would be inappropriate to limit the applicability of the VI code of conduct conditions of licence to BCE's commercial interactions with licensed or exempt BDUs having fewer than 500,000 total subscribers, as proposed by BCE.
68. The Commission notes that this threshold would exclude those BDUs that serve the vast majority of Canadian subscribers. It further notes that these larger BDUs opposed the transaction due to BCE's position in the market and their experiences in negotiations with BCE. Given BCE's position as the largest broadcaster in Canada, the Commission considers that the safeguards should apply to all BDUs, regardless of their size, to ensure that their subscribers benefit from service choice and package flexibility.
69. The Commission is particularly concerned about the impact that specific terms and conditions could have on subscribers served by BDUs operating in rural or low-density areas, and will consider this potential impact when assessing the reasonableness of terms and conditions.
70. The Commission finds that transforming elements included in the current VI code of conduct into conditions of licence for BCE's programming services and BDUs would provide the necessary safeguards for the efficient delivery of programming at affordable rates and reasonable terms of carriage. The Commission considers, however, that some of the provisions of the VI code of conduct<sup>11</sup> do not need to be converted into enforceable obligations in order to address the Commission's concerns. Consequently, certain provisions have not been included in the list of conditions of licence. Accordingly, the Commission has set out in Appendix 2 to this decision a list of applicable **conditions of licence**. It **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add these conditions to the broadcasting licences for all television programming undertakings and BDUs, as applicable, that will be operated by a BCE-related entity following the close of the transaction.

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<sup>11</sup> For example, clause 3 relating to the inclusion of non-related programming services in theme packages, and clause 4 relating to the inclusion of independent Category A services in the best available packages consistent with their genre and programming.

71. The Commission notes that, given the breadth of concerns expressed and the size and nature of a combined BCE/Astral, it would not hesitate to act if presented with evidence of non-compliance, using the different mechanisms at its disposal, including those powers contained in sections 9(1)(h) and 12 of the Act.
72. The Commission notes that the imposition of the conditions of licence set out in Appendix 2 will not limit in any way the applicability of the VI code of conduct on BCE-related entities or on other parties.

Tied selling, negotiation of non-linear rights and provision of a notice

73. The Commission is satisfied with the safeguards proposed by BCE in regard to the prohibition on tied selling, the requirements relating to the negotiation of the non-linear rights at the same time as linear rights, and a 90-day notice of the impending launch of a new programming service. It considers that they equally address the concerns expressed by interveners regarding the availability of programming services on a standalone basis and the availability of programming rights on a timely basis. In Appendix 2, it has set out the safeguard<sup>12</sup> as **conditions of licence**, and **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add these conditions of licence to the broadcasting licences for all television programming undertakings that will be operated by a BCE-related entity following the close of the transaction.

Enhanced “no head start” rule for digital media

74. Although a “no head start” rule is already in place in the Digital Media Exemption Order, the rule is only applicable when the undertaking controlling the multiplatform rights is ready to exploit them itself. Rogers and TELUS submitted that the Commission should establish a mechanism that would allow distributors to exploit multiplatform rights absent an agreement, even if BCE is not yet exploiting those rights. However, this mechanism would be difficult to implement as it would require the Commission or interested parties to be informed, at all times, of all non-linear programming for which BCE controls the rights. Further, it would raise confidentiality issues. For this reason, the Commission considers that the proposed mechanism does not constitute a workable safeguard.
75. Nevertheless, the Commission is concerned that BCE’s market position relating to multiplatform rights could permit it to act as a “gatekeeper,” effectively preventing other distributors from offering services to their customers until BCE has decided to offer such services on its own platforms. The Commission is concerned that this could stifle innovation and limit the growth of digital media in Canada.

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<sup>12</sup> The Commission notes that the inclusion of the phrase “until the end of the licence term” at the beginning of some of the conditions proposed by BCE is not necessary, as all conditions of licence are applicable until the end of the licence term, unless indicated otherwise. The Commission has eliminated this phrase as a result.

76. Accordingly, the Commission expects BCE's programming undertakings not to unduly withhold non-linear rights, or impede others from obtaining such rights, from competing distributors, even if BCE is not exploiting such rights itself.

#### Access to advertising availabilities by competitors

77. The Commission acknowledges that with the acquisition of Astral's services, BCE will control a significantly large advertising inventory, both on television and radio, and will be in a position to limit access to valuable advertising space by its competitors. This situation could have a detrimental effect on competitors not controlling similar advertising availabilities themselves.
78. The Commission is of the view that with the additional broadcasting undertakings, BCE will have a greater ability to unduly limit access to advertising availabilities by competitors. In regard to television undertakings, the Commission considers that the provisions relating to undue preference found in a number of the regulations address these concerns. However, there is no such provision in the Radio Regulations. The Commission therefore considers that it is necessary to impose a condition of licence on all BCE-related radio stations requiring them to provide commercially reasonable access to advertising availabilities to unrelated operators of broadcasting undertaking and telecommunications service providers. A **condition of licence** to this effect is set out in Appendix 2. The Commission **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add this condition of licence to the broadcasting licences for all radio programming undertakings that will be operated by a BCE-related entity following the close of the transaction.

#### Requirement to file affiliation agreements

79. At the hearing, the Commission solicited BCE's view on the possibility of filing all new affiliation agreements signed by a BCE-related entity for prior Commission approval. The Commission suggested that this would provide it with an opportunity to exercise a before-the-fact (*ex ante*) oversight of the wholesale market, in order to complement its current regulatory framework, which is mainly comprised of *ex post* interventions. The Commission notes that BCE opposed this proposal.
80. In the Commission's view, additional oversight is required given the concerns expressed over BCE's increased ability to act in an anti-competitive manner as a result of the present transaction. However, the Commission acknowledges that prior approval of all new affiliation agreements signed by BCE would create administrative burden and potential delays for BCE and its contracting parties. It therefore finds that it would not be appropriate to impose a safeguard to this effect.
81. In the alternative, the Commission considers that requiring all of BCE's television programming undertakings and BDUs to file with the Commission all of their

affiliation agreements within the five days following their execution would provide the Commission with the additional oversight required while avoiding the negative consequences of a prior approval approach. The Commission notes that this obligation will require the filing of affiliation agreements involving BCE's undertakings and unrelated parties as well as intracorporate affiliation agreements involving related BCE undertakings. While the Commission will not be approving these agreements, having them on file will enable it to monitor BCE's commercial arrangements with its programmers and distributors, as well as BCE's intracorporate arrangements. In the event that an affiliation agreement filed by BCE raises concerns over improper conduct, such as undue preference or a breach of a VI code of conduct condition of licence, the Commission will inquire into the matter pursuant to section 12(1) of the Act.

82. In regard to the above, the Commission has set out a **condition of licence** in Appendix 2. The Commission **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add this condition of licence to the broadcasting licences for all television programming undertakings and BDUs that will be operated by a BCE-related entity following the close of the transaction.

#### Dispute resolution prior to the expiry of an affiliation agreement

83. At the hearing, BCE agreed to the establishment of a new process for final offer arbitration (FOA) that would be triggered if the parties do not reach an agreement six months before the expiry date of the existing affiliation agreement. The Commission notes, however, that in an undertaking submitted on 13 May 2013, BCE revised its position and argued that such a pre-expiry FOA mechanism should be invoked 90 to 120 days before the expiry date of the affiliation agreements (instead of the six-month period discussed at the hearing).
84. The Commission considers that a pre-expiry dispute resolution mechanism could reduce the risks for operators of smaller broadcasting undertakings by shortening delays in negotiations and reducing the possibility of retroactive fees and interest following a Commission decision. It considers that 120 days before the expiry date of an affiliation agreement would be appropriate for triggering a Commission proceeding.
85. Furthermore, the Commission considers that FOA might not always be the best means to resolve a dispute, depending on the circumstances. For example, small broadcasters have submitted that they are generally reluctant to use FOA, as they feel it puts more risk on them than on larger broadcasters.
86. Accordingly, the Commission considers it appropriate to require BCE-related licensees to enter into dispute resolution, under sections 12 to 15 of the *Broadcasting Distribution Regulations*, with Canadian licensed or exempt undertakings if an agreement is not reached within the 120 days preceding the expiry date of the existing affiliation agreement. However, it will not limit this

requirement to FOA. Rather, it will decide on a case-by-case basis the means by which the dispute should be addressed. The Commission has set out in Appendix 2 a condition of licence to that effect. The Commission **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add this condition to the broadcasting licences for all television programming undertakings and BDUs that will be operated by a BCE-related entity following the close of the transaction.

Elimination of genre protection and prohibition of exclusivity agreements for pay television services

87. The Commission considers that proposals to eliminate genre protection and prohibit exclusivity agreements for pay television services raise broader policy issues not solely related to the acquisition of Astral's assets by BCE. These issues should therefore be considered in the context of a policy review. In this regard, the Commission notes that it has announced a review of the genre protection policy in the CRTC Three-Year Plan 2013-2016.<sup>13</sup>

**Other issues relating to television: Status of CJDC-TV Dawson Creek and CFTK-TV Terrace, and other conventional television stations**

88. The Commission has acknowledged in previous proceedings that the overall viability of conventional television stations is in question.<sup>14</sup> In the current proceeding, BCE stated that local television stations continue to struggle, particularly in smaller markets, and committed to keep open until 2017 all of its current conventional television stations as well as the two television stations acquired from Astral (CJDC-TV Dawson Creek and CFTK-TV Terrace), and to maintain the current levels of local programming for all of these stations. The Commission is of the view that the continued operation of these conventional television stations is critical to providing Canadians with access to a significant amount of locally relevant programming, to the overall benefit of the Canadian broadcasting system. These are important commitments from BCE given the many financial and operational challenges faced by conventional television stations. But for these commitments, the Commission would not have approved the transaction. As a result, the Commission **directs** BCE to adhere to these commitments.

**Other issues relating to television: Terms of trade agreements**

89. BCE proposed, as a condition of approval, to apply for conditions of licence for all purchased Astral services requiring it to adhere to a terms of trade agreement with the Canadian Media Production Association (CMPA) for English-language services and with L'Association québécoise de la production médiatique for

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<sup>13</sup> This can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Reports and Publications."

<sup>14</sup> See, for example, Broadcasting Decision 2011-163.

French-language services, and to enter into good faith negotiations with the Alliance des producteurs francophones du Canada (APFC).

90. The Commission is satisfied with the above commitments and has set out in Appendix 2 **conditions of licence** in this regard. The Commission **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add those conditions of licence to the broadcasting licences for those Astral television programming undertakings that will be operated by a BCE-related entity following the close of the transaction.
91. The Commission expects that a terms of trade agreement will be promptly reached with the APFC and **directs** BCE to file by no later than **29 July 2013** a report on the progress of the negotiations. Once the terms of trade agreement with the APFC is concluded, the Commission **directs** BCE to apply to add conditions of licence in this regard to the broadcasting licences for its television programming undertakings.

#### **Other issues relating to television: Impact on independent production**

##### ***Interventions***

92. In general, independent producers supported the application. Many currently have business relationships with BCE, Astral or both, and expect that these relationships will continue after the transaction, perhaps on a larger scale. They also supported the applicant's proposals along the "create" axis,<sup>15</sup> that is, to create and promote compelling new content. The APFC supported the applicant's proposal to allocate money from its tangible benefits package proposal to independent producers.
93. However, the Writers Guild of Canada and the Alberta Media Production Industries Association submitted that should the Commission approve the transaction, there would be fewer doors to knock on and fewer decision-makers who would determine which programs would be commissioned. PIAC et al. submitted that the acquisition of Astral would leave a variety of small independent broadcasters at a distinct disadvantage against the vertically integrated broadcasters that form a highly concentrated oligopoly.

##### ***Astral and BCE's reply***

94. Astral and BCE submitted that the support expressed by all of the major creative groups and guilds for the application is a reflection of their commitment to the creative community. They also submitted that Astral has a proud track record of strong committed relationships with independent producers and that the present

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<sup>15</sup> The Commission notes that the "create" axis is one of its three pillars that support its overarching objective to ensure that Canadians have access to a world-class communication system.

transaction will build on and strengthen those relationships. They also stated that all of their on-screen television benefits and the lion's share of their total benefits package is earmarked for independent producers. Finally, they submitted that the programming team for French-language operations will remain in Montréal.

***Commission's analysis and decision***

95. Although both BCE and Astral have the requirement to direct 75% of expenditures on programs of national interest<sup>16</sup> (PNI) to the independent production sector, the Commission notes that any merger of two broadcasting groups raises the concern that there will be “fewer doors left to knock on” for independent producers. In addition to the reduction in the number of decision-makers to whom they can pitch their proposals, independent producers that do not have a historical relationship with the acquiring entity may find themselves left at a disadvantage. For instance, BCE/Astral could choose to work with a select group of producers it knows and trusts, to the exclusion of those who produced programming for Astral.
96. This would appear to be the case in the English-language market in particular as BCE and Astral are both significant acquirers of independent production. A BCE/Astral merger would indeed mean producers would have “one less door to knock on.” The Commission nevertheless notes that independent producers generally supported the transaction, that BCE/Astral is committed to independent Canadian production, and that each service acquired from Astral has a distinct signature. Accordingly, the Commission finds that the impact of the transaction on independent production does not require direct regulatory intervention at this time.

**Concentration of ownership – radio: Common Ownership Policy – divestitures**

97. The Commission's Common Ownership Policy for radio sets out many objectives, including preserving the availability of distinct news voices in a community and ensuring competition and format diversity. Restricting the ownership of stations in a given market continues to be one of the Commission's most effective tools to ensure that a diversity of voices exists in a community.
98. The Common Ownership Policy establishes that in markets with fewer than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight or more commercial stations operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language. The Commission maintained this approach in the 2006 Commercial Radio Policy and in its policy on diversity of voices, as clarified in Broadcasting Information Bulletin 2010-341.

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<sup>16</sup> PNI is more fully discussed beginning in paragraph 170 of this decision.

### ***Position of Astral and BCE***

99. Astral and BCE proposed to divest of ten radio stations (nine FM and one AM) in Vancouver, Calgary, Winnipeg, Toronto and Ottawa-Gatineau (English-language market) in order to comply with the Common Ownership Policy. Of those stations, seven currently belong to Astral (CHHR-FM Vancouver, CKZZ-FM Vancouver, CISL Vancouver, CFQX-FM Selkirk, CHBM-FM Toronto, CKQB-FM Ottawa-Gatineau, and CJOT-FM Ottawa-Gatineau), and three to BCE (CKCE-FM Calgary, CHIQ-FM Winnipeg, and CFJX-FM Toronto).
100. Astral and BCE stated that the divestiture scenario proposed is not an attempt to trade underperforming stations for successful ones. The stations selected represent a variety of formats, and ranking in their respective markets, profitability and future potential. They indicated that it selected the stations in two phases, based on the following criteria:
- format; brand and key contracts; assets, location and rent vs. own; financial performance; frequency class and footprint; and
  - customer base and potential for overlap; audience base and potential for overlap; audience P1<sup>17</sup> strengths and brand health; key talent; asset lifespan, replacement; transition complexity and cost; and benefits impact.

### ***Interventions***

101. Interveners submitted that the divestiture proposal remains unchanged from that proposed in the context of Broadcasting Decision 2012-574, and stated that they were unconvinced by Astral and BCE's explanations. PIAC et al. argued that the impact of the proposed transaction would be most significant in the national radio market and the English-language radio market, and that there has been a steady decline in competition in the radio sector.

### ***Commission's analysis and decisions***

102. The Commission has considered Astral and BCE's justifications for the proposed divestiture plan for the radio assets and notes that, with the exception of the Montréal market, the proposal is consistent with the Common Ownership Policy. The Commission also finds that the proposed divestiture plan provides assurance that there is a diversity of voices at the local level. Accordingly, the Commission is satisfied with the divestiture plan as proposed.
103. To ensure that BCE remains in compliance at all times with the Common Ownership Policy, the Commission **directs** BCE, as a **condition of approval**, to transfer the interim management and control of the radio programming

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<sup>17</sup> This is the industry term used to refer to loyal listeners whose first preference is the radio station in question.



undertakings identified above to a trustee pursuant to terms of the voting trust agreement addressed in a letter of approval also issued today, by no later than **29 July 2013**.

**Concentration of ownership – radio: Common Ownership Policy – exception for the Montréal radio market**

***Position of Astral and BCE***

104. Astral and BCE requested an exception to the Common Ownership Policy in Montréal (English-language market) to allow BCE to own four English-language stations (two AM, two FM) in that market. BCE currently owns CKGM Montréal, and would acquire three stations currently owned by Astral: CJAD Montréal, CJFM-FM Montréal and CHOM-FM Montréal.
105. Astral and BCE stated that the requested exception is in the public interest as it would ensure that Montréal's minority English-language community continues to receive a sports talk radio service from CKGM. It further argued that an exception is warranted in the present circumstances given that:
- it would be consistent with section 5(2)(a) of the Act;<sup>18</sup>
  - it would result in the attainment of broadcasting policy objectives, particularly section 3(1)(c) of the Act;<sup>19</sup>
  - there has been listener outcry for CKGM to remain an English-language sports station;
  - the preservation of CKGM as an all-sports talk station can only be guaranteed by Bell Media (i.e., the current licensee). BCE committed to continue operating the station in that format by condition of licence for a period of seven years;
  - the exception will not have an adverse impact on the other radio stations in the market;
  - the exception will not preclude new competitors from entering the market; and

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<sup>18</sup> The Canadian broadcasting system should be regulated and supervised in a flexible manner that is readily adaptable to the different characteristics of English- and French-language broadcasting and to the different conditions under which broadcasting undertakings that provide English- or French-language programming operate.

<sup>19</sup> It is hereby declared as the broadcasting policy for Canada that English- and French-language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements.

- the exception will not confer any competitive advantage upon BCE, given that CKGM's tuning share is roughly 3%, and given that the station is unprofitable.
106. Astral and BCE indicated that should the Commission grant the exception, CKGM would donate \$105,000 in sports journalism scholarships to Concordia University (\$15,000 per year for seven consecutive broadcast years), as well as \$140,000 to amateur sports in Montréal (\$20,000 per year for seven consecutive broadcast years). They recognized that amateur sports would not qualify as an eligible Canadian content development (CCD) initiative consistent with the 2006 Commercial Radio Policy and stated that they would reallocate the donations from amateur sports to scholarships, should the Commission require them to redirect those donations to eligible CCD initiatives.
  107. BCE stated that it was not prepared to divest itself of CJAD, CJFM-FM or CHOM-FM to comply with the Common Ownership Policy because those three stations share technical, administrative and sales resources, and pool the costs of certain English-language programming, such as traffic and weather. It further stated that selling any of these stations would compromise the operations of those not sold and would decrease the quality of the service offered to the community.
  108. BCE stated that if the exception were denied, it would either sell CKGM to keep the other three stations, unless directed to do otherwise, or return CKGM's broadcasting licence, as determined by the Commission. It noted that should the licence be returned, the Montréal community would be deprived of its only English-language sports service, although some English-language sports programming would be broadcast on CJAD.

### ***Interventions***

109. The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) drew a parallel between Cogeco's request for an exception in the French-language Montréal market and Astral and BCE's exception for the English-language market. It noted that Cogeco proposed much more significant benefits, both tangible and intangible, to support its request. ADISQ expressed doubt that donations to amateur sports are relevant in the context of a request for an exception to the Common Ownership Policy. It questioned how an initiative that is unrelated to broadcasting can be considered in support to an exception to a regulation relating to ownership in broadcasting. ADISQ added that all participants in the sector should benefit from the exception.

### ***Commission's analysis and decisions***

110. In Broadcasting Decision 2011-721, the Commission approved BCE's application to amend the broadcasting licence for CKGM in order to change its frequency from 990 kHz to 690 kHz. During this competitive process, Bell Media argued that improving the station's signal quality, particularly with respect to its night-

time coverage of Montréal, would permit it to better serve its audience, especially those situated in the western part of Montréal Island, and to ensure its financial viability. In support of its position and to demonstrate CKGM's importance to the Montréal public, Bell Media convincingly mobilized its audience in order to maintain its point of view before the Commission and fully committed, during the hearing, to continue to serve its audience. Moreover, Bell Media indicated that the granting of frequency 690 kHz fell under its strategic plan. The Commission considered that Bell Media's application was well founded and that the public interest was best served by granting the frequency 690 kHz to CKGM. The Commission therefore granted the frequency to Bell Media rather than to the other applicants.

111. The Commission notes that as part of this proceeding, residents of Montréal, both anglophone and francophone, as well as people living outside Montréal unequivocally demonstrated their affinity to CKGM's programming and stressed the importance of maintaining the presence of a unique English-language sports programming station in Montréal.
112. The Commission is of the view that CKGM's programming is unique and that it contributes to the diversity of programming in Montréal and to maintaining an English-language radio offering for the community. In light of all of the foregoing, the Commission is of the view that it would not be appropriate for BCE to divest itself of CKGM. The Commission is also of the view that BCE's desire to adhere to the Common Ownership Policy in this manner would result in a curtailing of the commitment that it made to CKGM's audience in 2011. The Commission therefore requires that BCE continue to operate CKGM under its current format.
113. Throughout the hearing, the Commission considered the possibility that BCE might not acquire one of the three of the English-language stations currently operated by Astral. The Commission notes that forcing BCE to divest of a station other than CKGM would considerably weaken its competitive position in the Montréal radio market. BCE would be deprived of a profitable station generating a relatively high level of revenue. It would also lose some of the synergies that are generated from that group of stations. Following this review and given the distinct nature of each station's programming, the Commission finds that separating the ownership would disrupt the balance – both economic and cultural – in the Montréal radio market and that this is not in the community's interest. The Commission expects that these stations will continue to be operated with distinct formats.
114. Further, while BCE would become the owner of four English-language radio stations in Montréal, it would own only two French-language stations. This would result in fewer than the maximum number of stations permitted by the Common Ownership Policy, if the English- and French-language markets were considered as one. The Commission also considers that CKGM's niche format, combined with the respective programming formats of CJAD, CHOM-FM and CJFM-FM,

would mitigate the impact that granting this exception would have on the competitive state of the market.

115. Moreover, the Commission notes Astral and BCE's proposal that, if granted an exception to the Common Ownership Policy in Montréal, BCE would make a contribution of \$245,000 to various initiatives targeting Montréal's English-language population over seven consecutive broadcast years. The Commission considers, however, that these proposed financial contributions should be to eligible CCD initiatives in order to directly benefit the Canadian broadcasting system and, more specifically, Canadian artists.
116. In light of the above, the Commission finds that Astral and BCE's requested exception to the Common Ownership Policy is warranted under the circumstances, as long as CKGM is operated as a sports station.
117. In order to ensure that CKGM remains a sports station, BCE stated that it would accept conditions of licence requiring it to maintain its current format, to ensure that not less than 90% of the programming broadcast during each broadcast day consists of programs drawn from content categories 1 (Spoken Word), 4 (Musical Production) and 5 (Advertising) as defined in Broadcasting Regulatory Policy 2010-819, and to ensure that not less than 96 hours of programming broadcast each broadcast week is devoted to local programming as defined in the 2006 Commercial Radio Policy.
118. In light of the above, the Commission authorizes BCE to acquire all three English-language radio stations owned by Astral and to continue to operate CKGM, as an English-language radio station. Consequently, the Commission **approves** the request for an exception to the Common Ownership Policy in Montréal. The Commission **directs** BCE, as **conditions of approval**, to apply by no later than **29 July 2013** to amend the broadcasting licence for CKGM in order to add the above-noted conditions of licence as well as a condition of licence relating to \$245,000 in CCD contributions, which covers the reallocation of the proposed \$140,000 in donations from amateur sports, with an emphasis on Montréal official language minority community (OLMC) emerging artists. These **conditions of licence** are set out in Appendix 2.

### **Proposed benefits of the transaction for the Canadian broadcasting system**

119. In regard to proposed benefits of the transaction for the Canadian broadcasting system, the Commission has considered the following:
  - whether the calculation of the value of the transaction is appropriate and consistent with general Commission practices;
  - whether the tangible benefits package relating to television is significant, unequivocal and consistent with Commission policies and practices;

- intangible benefits relating to television;
- other issues relating to television, specifically:
  - reporting requirements;
  - requirements relating to Canadian programming expenditures (CPE) and expenditures on PNI for the Astral group of services;
- whether the tangible benefits package relating to radio is significant, unequivocal and consistent with the Commission policies and practices;
- intangible benefits relating to radio; and
- unfulfilled tangible benefits resulting from previous transactions.

**Value of the transaction**

120. As set out in Broadcasting Public Notice 2008-57, the Commission determines the value of the transaction for the purpose of calculating the tangible benefits by using the value of the transaction as a whole. As a next step, such a value is allocated between licensed broadcasting assets and unlicensed assets. As such, all elements derived from the transaction are taken into consideration, including the assumed debt and leases, and the value of any acquisition premium.
121. Astral and BCE indicated that the purchase price of the shares of Astral was \$3 billion, and that a further \$380 million of net debt was being assumed by the purchaser. They acknowledged the Commission's usual practice to also include the value of assumed leases and ascribed a value of \$637 million to those leases. Accordingly, the Commission has calculated the total purchase price to be \$4.017 billion (\$3 billion + \$380 million + \$637 million).
122. Astral and BCE filed a valuation report prepared by PricewaterhouseCoopers LLP, which grouped and valued the assets based on the discounted cash flow method as the main method and transaction and trading multiples as secondary supporting methods. The main asset groups include French-language pay and French-language specialty television, English-language pay and English-language specialty television, television joint ventures, French-language radio, English-language radio, and unlicensed assets, some of which relate to Astral's out-of-home advertising business (out-of-home).
123. The Commission notes that some interveners raised issues relating to the value of the transaction proposed by Astral and BCE. The Commission has taken into account these views in conducting its analysis.

124. In its analysis of ownership transactions, the Commission reviews the value of a transaction and the value of the assets to be divested, if necessary.

***Revised value of the transaction***

125. The Commission determines the amounts subject to tangible benefits in two steps:

- determination of the value of the transaction;
- allocation of the value of the transaction based on the percentages calculated from the valuation report of the value of asset groups (radio, television, unlicensed and divestitures) compared to the total value.

Determination of the value of the transaction

126. Under the agreement, the purchase price is \$3 billion. Consistent with its practice, the Commission adds to this the value of debt and leases being assumed as of the date of the transaction, in this case 16 March 2012. To estimate this value, the Commission used the values contained in Astral's interim audited financial statements dated 29 February 2012.

127. The Commission's general practice is to add the gross value of assumed debt, which in the present case is \$495 million.

128. As for assumed leases, the Commission's practice is, as a first step, to include the value for all leases (radio, television and unlicensed) in the value of the transaction and, as a second step, to allocate the value of the transaction, including assumed leases, between asset groups. The Commission has abided by this practice in the present case.

129. However, the valuation report allocated the value of assumed leases as part of the determination of the value of the different asset groups (i.e., the second step). This approach allowed for the allocation of leases in the following manner: 1) direct allocation of leases specific to asset groups, and 2) allocation of remaining leases using other appropriate allocation methods. Astral and BCE explained that its method, while diverging from Commission practice, took into account the capital intensive nature of out-of-home, thus preventing inflating the value of other asset groups to which these leases did not pertain.

130. In addition, Astral and BCE deducted 50% of the value of assumed leases for 2012 because the date of the transaction was six months after year end.

131. When the Commission uses values from financial statements as proxies for values as of the date of the transaction, it does not adjust numbers for the passage of time. As a result, the Commission has used the full value of assumed leases for 2012.

132. On one occasion, specifically the MLSE transaction (Broadcasting Decision 2012-443), the Commission excluded the value of certain leases from the value of the transaction. In that case, the audited financial statements clearly identified the leases as not related to the licensed broadcasting assets. In regard to the present transaction, Astral’s audited financial statements do not separately identify the leases related to out-of-home. At the public hearing, in an attempt to obtain the same level of assurance as was contained in the exclusion in the MLSE transaction, and in order to envisage the possibility of excluding the out-of-home specific leases from the value of the transaction, the Commission offered the applicant a chance to file an auditor’s report on the value of leases directly attributable to out-of-home assets.
133. Astral and BCE filed an accountant’s report<sup>20</sup> that described the processes used by the auditors for the leases in the preparation of Astral’s audited financial statements. The signatory of the report stated that there is no opinion expressed. The Commission is of the view that the value of leases directly attributable to out-of-home has not been properly validated by an independent party as requested and therefore has not excluded their value of these leases from the value of the transaction. Consequently, the Commission has included the full amount of \$659 million in the calculation of the value of the transaction, which includes the commitments relating to software licences.
134. As a result, the Commission determines the value of the transaction to be \$4.154 billion, as shown in the following table (in millions of dollars):

<b>Purchase price</b>	<b>\$3,000</b>
Additions:	
Assumed debt	\$495
Assumed leases	\$659
<b>Total</b>	<b>\$4,154</b>

Allocation of the value of the transaction

135. The report determines the value after the inclusion of leases. Because the Commission treats leases in the calculation of the value of the transaction in accordance with its practices, the examination of the valuation report considers the value before leases, identified in the report as enterprise value (hereinafter the “value”).
136. Following its analysis, the Commission has determined that a number of factors in the valuation report should be addressed. Accordingly, the Commission has

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<sup>20</sup> *Accountant’s Report in Connection with the Schedule of Minimum Lease Commitments of Astral Media Inc.* (31 August 2011)

revised the valuation report filed by Astral and BCE in regard to the following items:

- the treatment of subscription video on demand;
- the market risk premium;
- beta factors;
- specific risk premiums;
- terminal growth rates; and
- multiplatform synergies.

137. In accordance with Commission practice, the valuation report treated the online activities of Astral separately from its licensed activities. It also used the same treatment for **subscription video on demand (SVOD)** services, allocating them to unlicensed activities instead of pay television, submitting that SVOD services are offered by distributors and that, in this case, the broadcaster acts as an unlicensed programming supplier. The Commission is of the view that SVOD services constitute an extension of licensed services and that licensed broadcasters remain responsible for the content. As a result, it has revised the valuation report so as to re-group SVOD services with licensed broadcasting services.
138. The calculation of the discount rate includes a **market risk premium**. This premium represents the additional rate of return over the rate of return of risk-free investments that investors have historically required to invest in Canadian equity markets rather than in risk-free investments. It applies equally to all assets. It is calculated using decades of data and reflects all economic cycles, including strong growth and severe slowdowns, and is traditionally set at 5%. The market risk premium can be referred to as the unconditional risk premium. The Commission notes that the valuation report used a 5.5% conditional premium. The Commission also notes that, for the purpose of impairment testing in Astral's interim financial statements dated 30 November 2011, the company used a 5% market risk premium.
139. A conditional market risk premium, in addition to reflecting the unconditional historical market risk premium, takes into account additional return on the stock market that an investor would require due to current market conditions. The Commission is of the view that the market risk premium, based on history, should not take into account current market risk conditions, which are considered in other assumptions. Also, as it indicated for the MLSE transaction, the Commission considers that it is customary to use a market risk premium of 5%, which reflects the market risk associated with long-term investments. It has therefore adjusted the valuation accordingly and has used a 5% market risk premium.



140. **Beta factors** represent the level of risk of an industry or company compared to the market. The higher the beta, the greater the risk an enterprise presents and, thus, the lower its value. The valuation report used different beta factors for six categories of assets based on a sample of comparable companies from the S&P 500 index. Astral and BCE explained this choice by stating that this coefficient reflects the core activities of Astral.
141. Although the Commission finds this explanation reasonable, it considers that it is not necessary to derive a new beta based on a sample of the S&P 500 index given the availability of a specific beta for Astral's pay and specialty television and radio services. As a result, for these pay and specialty television and radio services that will not be divested, the Commission has used only the beta specific to Astral of 0.73. The Commission has not made an adjustment for services to be divested. The above-noted adjustment increases the beta for radio services, thereby reducing the value of those services, while reducing the beta for pay and specialty television services, thereby increasing the value of those services.
142. The valuation report attributes **specific risk premiums (alphas)** to the different groups of assets. These premiums represent the additional risk perceived over the market risk and the beta factors. The level of specific risk comprises a central hypothesis in the establishment of the value. The higher the risk, the lower the value.
143. The valuation report hypothesizes that the groups of Astral's assets evolve in an autonomous fashion, without the benefit of belonging to a diversified group. This is what the report calls "pure plays." As a result, the assets would have a higher risk.
144. While the Commission recognizes that there is some level of specific risk associated with Astral's assets, it is of the view that Astral is a diversified company rather than a pure play, and that, as a result, the specific risk premium contained in the valuation report is too high. Astral's financial results demonstrate the quality of its assets. In general, over the course of the last number of years, the profit margins of Astral's broadcasting activities have significantly surpassed the profit margins in the industry. In this regard, the Commission notes Astral's 31 October 2012 press release entitled "Astral records a 16<sup>th</sup> consecutive year of growth," which announced its results for the 2012 fiscal year.
145. In adjusting the specific risk premium to take into account the diversified nature of Astral, the Commission has calculated the implicit alpha for each asset group. To this effect, the Commission used the industry discount rates adjusted for market risk premium and beta factors (as noted above), and Astral's discount rates.<sup>21</sup> The Commission then reduced each of these implicit alphas by one

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<sup>21</sup> In the case of English-language pay services that will not be divested, the discount rate per the report, according to BCE, has been reduced by 0.5%. The Commission removed the 0.5%

percentage point, except those already below 1%. The reduction in discount rates has the effect of increasing the value of these assets.

146. Finally, to complete its examination, the Commission reflected an increase in the discount rates made in the valuation report to account for the increased risk relating to the assets to be divested. The Commission finds it reasonable to consider that the assets to be divested could be riskier outside of Astral. As a result, for the same assets to be divested, specifically for French-language specialty services, joint ventures and radio services, the Commission has increased the discount rate by one percentage point.
147. The **terminal growth rate** represents the growth of an asset in perpetuity after the projection period. The higher the terminal growth rate, the higher the value. The resulting value generally represents more than 75% of the total value of an asset. It is generally considered that the terminal growth rate is, on average, equal to the growth rate of the economy.
148. The valuation report used a variety of terminal growth rates for different assets, ranging from 1% to 3.5%, with averages of 1.5% for licensed assets and 3% for unlicensed assets. The Commission compared these rates to those used in Astral's financial statements<sup>22</sup> for the impairment testing of its assets. BCE explained that, for discounting as well as for terminal growth, rates of the financial statements were higher than those of the valuation report, due to a different basis of calculation. The Commission notes however that the terminal growth rate for out-of-home is the same in both documents.
149. The Commission is of the view that the terminal growth rate used in the valuation report should reflect the long-term growth rate of the economy. This rate can be estimated using a variety of different sources. The lowest terminal growth rate used by the applicant is 1%. The average annual increase in nominal gross domestic product since 1981 is approximately 5%. The Commission considers that a terminal growth rate of 3% would be reasonable in the current circumstances. The Commission has applied this rate to all of Astral's assets except those without a terminal value (Feature Publishing and the out-of-home contract in Toronto) and pay-per-view television, for which it keeps the negative growth rate used in the valuation report.

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reduction before consideration of BCE's discount rate for this service, as indicated in the section on multiplatform synergies.

<sup>22</sup> Interim financial statements as of 30 November 2012

150. Finally, **multiplatform synergies** arise from the additional revenues achieved through the distribution of the programming of the acquired entity, on all means of distribution of the purchaser, licensed or not. Astral and BCE have asserted the advantages of the present transaction in this regard.
151. Although Astral and BCE stated that they did not have a value for these synergies, they were taken into account in the valuation report by way of a reduction of 0.5 percent in the discount rate for the English-language pay television services being retained. They explained that even though similar synergies could be found in French-language pay and specialty television services, no adjustment had been made in this regard because the values assigned to these services in absence of these synergies were already at the highest levels the market would bear.
152. The Commission is of the view that all of the pay and specialty television services being retained could be sources of multiplatform synergies. The Commission is equally of the view that these synergies should have been included in the revenues of these services instead of being reflected by an adjustment to the discount rate. In light of the fact that Astral and BCE did not provide their forecast of supplementary revenues expected from these services, the Commission considers it reasonable to add 10% to the final value obtained for these services after all the other adjustments mentioned above.
153. In light of all of the above, using all of the values adjusted in the valuation report and the revised value of the transaction (\$4.154 billion), the Commission has calculated the percentage of the value of each group of assets compared to the total value, and has allocated the value of the transaction in accordance with these percentages. This is shown in the following table, which also provides the calculation of the amount of tangible benefits relating to television and to radio, to be paid based on the Commission's decisions in this regard set out in paragraphs 158 and 219, respectively.

**Revised allocation of the value of the transaction and value of tangible benefits**

	<b>% of allocation</b>	<b>Value of the transaction (\$million)</b>	<b>Tangible benefits (\$million)</b>
Television	42.2	1,753.8	175.4 (10%)
Radio	24.6	1,022.1	71.5 (7%)
Unlicensed	11.3	467.1	0
Divestitures-Television	17.5	726.9	n/a
Divestitures-Radio	4.4	184.1	n/a
<b>Total</b>	<b>100</b>	<b>4,154</b>	<b>246.9</b>

### ***Value of the assets to be divested***

154. As part of the transaction, Astral and BCE proposed that BCE be exempted from paying tangible benefits on those services proposed for divestiture. However, in order to ensure that there is no shortfall between the total amount of benefits on the later sale of these services and the amount of benefits attributable to them under this transaction, they proposed to guarantee that BCE would cover any shortfall in tangible benefits separately for all radio and television services. Those additional benefits would be directed toward on-screen, independently produced PNI, proportionally between French- and English-language content. Radio-related tangible benefits would be directed in accordance with the 2006 Commercial Radio Policy.
155. The Commission's general practice is to not require the payment of tangible benefits on assets to be divested. Consistent with this approach, the Commission is of the view that it would not be appropriate to require BCE to pay tangible benefits on the undertakings to be divested as a result of the present transaction. Rather, the Commission considers that BCE should be responsible for paying tangible benefits in respect of any shortfall that could result from the divestiture of those assets to ensure that all of the benefits resulting from the purchase of the Astral undertakings flow into the Canadian broadcasting system.
156. Accordingly, the Commission finds that BCE should be required to pay tangible benefits in respect of any shortfall between \$72.69 million (10% of \$726.9 million) for the television programming undertakings to be divested and \$11.05 million (6% of \$184.1 million) for the radio programming undertakings to be divested, and the aggregate value of the tangible benefits for the television and radio assets (calculated separately) to be paid by future purchasers of those assets. In the event of a shortfall, BCE would be required to file a tangible benefits proposal within 30 days of the Commission's decision approving the transfer of the last of the divested undertakings. The Commission has set out in Appendix 2 separate **conditions of licence** to that effect for television and radio programming undertakings that will be operated by a BCE-related entity. The Commission **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add these conditions of licence to the broadcasting licences for all television programming undertakings and radio undertakings (as applicable) that will be operated by a BCE-related entity following the close of the transaction.

### **Tangible benefits relating to television**

#### ***Amount of tangible benefits package***

157. As set out in Public Notice 1999-97, for transfers of ownership or control involving television programming undertakings, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits. For television broadcasting undertakings, including conventional, pay and specialty undertakings, the Commission generally expects

the contributions proposed to represent 10% of the value of the transaction as determined by the Commission (see Public Notice 1999-97 and Broadcasting Public Notice 2007-53). Such benefits should be directed to the communities served and to the broadcasting system as a whole. Further, in order to be accepted as a benefit, the proposed expenditure must be “incremental,” that is, directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction, and should generally flow to third parties, such as independent producers. In addition, the Commission’s general approach provides that the majority (approximately 85%) of the benefits should result in on-screen programming, the remaining 15% being allocated to social benefits.

158. Astral and BCE proposed a tangible benefits package for television totalling \$124,600,000.<sup>23</sup> The Commission requires, however, that the amount of tangible benefits must be in accordance with the revised value of the transaction. Accordingly, the Commission has calculated the tangible benefits package to be \$175,400,000, as indicated in the table set out in paragraph 153 above. The Commission **directs** BCE to file by no later than **29 July 2013** a revised tangible benefits package with a value of \$175,400,00 that reflects the Commission’s determinations set out below. The revised amount of the tangible benefits package should be allocated to English- and French-language initiatives in a proportion that reflects the value of the assets to be acquired. In addition, the Commission **directs** BCE to file an annual report on tangible benefits relating to television that result from the present decision.

***Allocation of tangible benefits***

159. Astral and BCE proposed a variety of tangible benefits initiatives. The Commission considers that the allocation proposed for the revised tangible benefits package is consistent with Public Notices 1989-109, 1993-68, and 1999-97, with Broadcasting Public Notice 2010-833, and with the Commission’s general approach, specifically in regard to the following:
- the revised value of the tangible benefits package represents 10% of the revised value of the transaction;
  - the allocation of on-screen versus social benefits respects the above-noted 85/15 ratio;
  - the English- and French-language allocations for the on-screen benefits are consistent with the linguistic markets of the services to be acquired; and
  - the proposed on-screen expenditures to digital media do not exceed 10%.

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<sup>23</sup> See the table of proposed tangible benefits relating to television set out in Appendix 3.

160. In the Commission's view, the following proposed initiatives would primarily benefit third parties, be incremental, and constitute an improvement to the community and to the Canadian broadcasting system. Accordingly, it approves the initiatives as well as the amount proposed for each. These initiatives and the amounts proposed are as follows:

- the Harold Greenberg Fund (\$23,800,000);
- Youth programming initiatives (\$4,900,000);
- Les FrancoFolies de Montréal (\$1,750,000);
- Media Training Programs (\$2,690,000);
- Academy of Canadian Cinema and Television (\$1,250,000);
- Canadian Women in Communications (\$400,000);
- the Canadian Broadcasting Participation Fund (\$2,000,000);
- the Canadian Broadcast Standards Council (\$500,000);
- Telefilm Canada (\$5,000,000).

161. The Commission notes that these funds must be incremental to those that Astral and BCE are currently providing to the above-noted organizations, and considers that these initiatives are acceptable and consistent with the Commission's tangible benefits policy.

162. The Commission notes, however, that other proposed initiatives raised issues that must be addressed for the reasons set out below.

#### Canadian Association of Film Distributors and Exporters Promotion Fund

163. In conjunction with the Canadian Association of Film Distributors and Exporters (CAFDE), Astral and BCE proposed to create the CAFDE Promotion Fund, to which it proposed to allocate \$3 million over five years.

164. AQTIS et al. opposed the allocation of money to this fund. They argued that the fund could not be certified since it would be dedicated to film promotion rather than film production.

165. In its reply, Astral and BCE stated that this fund, unlike other independent funds dedicated to supporting feature films, would squarely target promotion rather than production, as the promotion of Canadian feature films is unfunded. As such, the CAFDE Promotion Fund would support Canadian film distributors in the promotion and exhibition of Canadian feature films to international audiences, with the goal of fostering a stronger Canadian film industry.

166. The Commission notes that nothing prevents an applicant from allocating money to a fund that is not certified by the Commission, provided that the applicant demonstrates that the fund is administered by an independent board of directors.
167. The Commission is of the view that the broadcasting system lacks funds for the promotion of Canadian feature films, but it is not convinced that this proposal properly addresses this problem. Consequently, the Commission **directs** BCE to file a proposal, as part of its revised tangible benefits package, for another initiative for the promotion of Canadian feature films.

#### Television Format Development Initiative

168. Astral and BCE proposed to allocate \$4 million over seven years to a Television Format Development Initiative for independent producers, directors, writers and actors to stimulate the development of new talent from the ideas stage to producing the pilot.
169. The Commission considers, however, that there is a risk that this initiative will be self-serving, and that the board of directors should be independent from BCE/Astral to ensure that the benefits flow to third parties. Therefore, the Commission considers it appropriate to require the applicant to propose a governance structure demonstrating that the board of directors will be independent.

#### Programs of national interest

170. An expenditure requirement for PNI was created to address the continuing need for regulatory support for key categories of Canadian programming and to ensure the appropriate production of Canadian drama and documentary programming. PNI are defined differently in the English- and French-language markets.<sup>24</sup>
171. As part of its tangible benefits package, Astral and BCE proposed to devote \$68.21 million to the independent development, creation and production of additional PNI (\$43.65 million to French-language programming and \$24.56 million to English-language programming). They proposed to spread the funding for the French-language market evenly over seven years. For the English-language programming initiatives, they proposed to start the benefits funding in 2017, stating that there is already an influx of resources in the English-language market due to recent industry transactions. In keeping with Broadcasting Public Notice 2010-833, Astral and BCE stated that no more than 10% of this allocation would fund stand-alone new media projects.

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<sup>24</sup> In the English-language market, PNI consist of programs from program categories 7 Drama and comedy and 2(b) Long-form documentaries, as well as specific awards shows. In the French-language market, they include programs from program categories 8(a) Music and dance other than music video programs or clips, 8(b) Music video clips, 8(c) Music video programs, and 9 Variety.

172. Interveners expressed concerns primarily over the types of programming (for example, drama, feature films or documentaries) that would be supported by this proposal. The CMPA requested that any program produced or acquired using PNI benefits designated for the English-language market be broadcast first on TMN. Other interveners claimed that it was critical for the PNI expenditures to be spent across the entire BCE group of assets instead of being directed to the services that BCE will be acquiring from Astral.
173. In addition, various OLMCs requested that some of the tangible benefits be reserved for OLMC production. The Quebec English-language Production Council (QEPC) proposed that 10% of BCE's total production budget be reserved for English-language producers in Quebec. APFC requested that a share of the different funds under the tangible benefits package be devoted to independent producers outside of Quebec.
174. Astral and BCE confirmed that it was their intention to broadcast all English-language programming produced under the benefits package for the first time on Astral's English-language services, and that French-language programming produced under their package would be aired for the first time on Astral's French-language services.
175. The Commission considers that PNI expenditures should be used to create and acquire the best possible Canadian programming, to be made available on whatever services Canadians choose. As such, what is of the utmost importance is that quality Canadian programming is produced and available to viewers, regardless of the service on which the programming is aired. In addition, given that PNI is clearly defined in the Commission's policies, the Commission considers that interveners' concerns relating to types of programming have been addressed. The Commission is of the view, however, that programming produced with these funds should not only be incremental, but also original.
176. The Commission **directs** BCE to file, as part of its revised benefits package, confirmation of the following in regard to PNI requirements:
- 100% of the PNI funding shall be dedicated to independent producers;
  - 10% of the funding for French-language PNI shall be dedicated to French-language OLMC producers in English-language markets, and 10% of the funding for English-language PNI shall be directed to English-language OLMC producers in Quebec;
  - 100% of the programming produced shall be in keeping with the Commission's following definition of "original Canadian program":
    - a Canadian program that, at the time of its broadcast by the licensee, has not been previously broadcast by the licensee or by any other licensee; or



- in cases where the licensee contributed to the program's pre-production financing, a Canadian program that has only been previously broadcast by another licensee that also contributed to its pre-production financing.

#### Canadian film festivals

177. The applicant proposed to direct \$4.37 million over seven years to various Canadian film festivals.
178. OLMC interveners noted that all of the French-language festivals proposed were located in Quebec and asked that this situation be corrected. In reply to the interventions, Astral and BCE proposed to support the Festival international du cinéma francophone en Acadie (Moncton) and indicated at the hearing that they would be open to supporting other festivals.
179. In the Commission's view, in order to achieve a better balance among the different initiatives, and to address in an equitable way the regional disparity of initiatives across the country, BCE should devote part of the funds directed to this initiative to regional festivals that are not already sponsored by BCE or Astral. Accordingly, the Commission considers it appropriate to require BCE to file with the Commission a proposal to address these concerns.

#### Consumer Education Initiative

180. Astral and BCE proposed to direct \$2.73 million in tangible benefits to consumer education over five years. The funding would be devoted to projects yet to be determined subject to further discussions with consumer groups.
181. On-Screen Manitoba, the Directors Guild of Canada, PIAC et al., Youth eMage Production, Cogeco and AQTIS et al.<sup>25</sup> submitted that Astral and BCE have provided few details as to what this initiative will entail, and questioned whether it constitutes a qualifying initiative. They requested that the Commission seek clarity on the matter.
182. In addition, PIAC et al. proposed to create a new stream within the existing Broadcasting Participation Fund (BPF) that would be specifically devoted to consumer research, outside of active Commission broadcasting hearings. They suggested that this new stream would result in research that defines what consumers need in order to achieve real empowerment in the broadcasting retail market.

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<sup>25</sup> The Alliance québécoise des techniciens de l'image et du son, the Société des auteurs de radio, télévision et cinéma, the Union des artistes and the Association des réalisateurs et réalisatrices du Québec

183. The Centre d'études sur les médias also proposed enhancing consumer education through research that would be conducted independently.
184. Although the Commission considers that PIAC et al.'s proposal has merit, the proposal is not consistent with the Commission-approved mandate of the BPF to help public interest and consumer groups offset the costs of participating in the Commission's broadcasting proceedings. As the structure and organization of the BPF were developed within the context of a specific mandate, it is more than likely that the bylaws would require modification, which would have to be approved by the Commission and which would require modifications to the BPF's supporting processes and procedures. Another consequence of the proposal is that it may require a reassessment of the composition of the BPF's board of directors and staff to ensure that the appropriate balance of experience and skills are available to fulfill the mandate. The Commission therefore considers that the implementation of PIAC et al.'s proposal would be impractical and could delay the positive impact that the BPF will have on the broadcasting system.
185. The Commission notes that Astral and BCE did not provide detailed information as to the type of initiatives that would be put forward under this proposal. It considers that it would be appropriate to use existing mechanisms rather than creating new ones, thereby not delaying the impact of the funding on the system. The Commission therefore considers it appropriate to require BCE to allocate funding to the following three existing initiatives:
- The Broadcasting Accessibility Fund (BAF). This fund was established to ensure that programming – regardless of whether the platform upon which it is available is traditional or digital (formerly referred to as new media) – will be accessible. Additional support to the BAF will help ensure the development of innovative solutions for making programming accessible in a digital environment, enabling all Canadians to be able to fully participate in Canadian society and the digital economy.
  - MediaSmarts. The mandate of this Canadian not-for-profit charitable organization is digital and media literacy. Its board of directors has representation from a wide spectrum of expertise – including academics, broadcasters, telecommunications service providers and Internet-based organizations (i.e., Google and CIRA) – and this funding will allow MediaSmarts to enhance its capacity as a digital and media literacy organization.
  - Centre d'études sur les médias. A contribution to this centre, which has two university partners – Laval University and HEC Montréal – would result in university calibre research. The Commission would expect research to be national in scope, focused on the opinions/views and needs of consumers, and result in baseline data that would be updated over time. In the Commission's view, the Centre d'études sur les médias is well positioned to advance the consumer research agenda and with this funding would act as a "hub" for this

type of research, partnering with other consumer-oriented organizations and universities.

186. The Commission considers it appropriate to require BCE to file a proposal indicating how the funds devoted to these initiatives will be allocated to the English- and French-language markets.

Commission's direction in regard to modified initiatives

187. In light of the above, the Commission sets out the following directions in regard to the modified initiatives:

- For the Television Format Development Initiative, the Commission **directs** BCE to file, as part of its revised tangible benefits package, a proposal for a governance structure demonstrating that the board of directors will be independent.
- The Commission **directs** BCE to file, as part of its revised tangible benefits package, confirmation of the following in regard to PNI requirements:
  - 100% of the PNI funding shall be allocated to independent producers;
  - 10% of the funding shall be dedicated to OLMC production in each language market;
  - 100% of the programming produced shall be in keeping with the Commission's following definition of "original Canadian program":
    - a Canadian program that, at the time of its broadcast by the licensee, has not been previously broadcast by the licensee or by any other licensee; or
    - in cases where the licensee contributed to the program's pre-production financing, a Canadian program that has only been previously broadcast by another licensee that also contributed to its pre-production financing.
- In regard to Canadian film festivals, the Commission **directs** BCE to file, as part of its revised tangible benefits package, a proposal to address concerns relating to a better balance among the different initiatives and to address in an equitable way the regional disparity of such initiatives across the country.
- In regard to the consumer education initiative, the Commission **directs** BCE to file, as part of its revised tangible benefits package, a proposal for the allocation of the \$2.73 million that was originally proposed for consumer education to the BAF, MediaSmarts, and the Centre d'études sur les médias. Further, the Commission **directs** BCE to file, also as part of the revised tangible benefits package, a proposal indicating how the funds devoted to

these initiatives will be allocated to the English- and French-language markets.

***Expenditure periods***

188. The Commission's long-standing general practice in regard to expenditure periods for tangible benefits is that they be paid in equal instalments over a seven-year period beginning in the year that the transaction is approved. The Commission notes that Astral and BCE proposed expenditure periods of less than seven years for certain initiatives. This is notably the case for the English-language PNI initiative, for which they proposed to spread the payments over a period of three years starting in 2017. They explained that the English-language independent production sector currently benefits from a significant influx of resources stemming from the major transactions that have recently occurred. Given that the tangible benefits generated by previous transactions will end in 2017, Astral and BCE proposed to wait until then to begin paying the PNI benefits for the present transaction. However, given the apparent lack of funding for certain communities (for example, the English OLMCs in Quebec) and for certain types of programming (such as documentaries), the Commission does not consider that it would be appropriate to depart from its long-standing general practice.
189. Accordingly, the Commission **directs** BCE to pay all tangible benefits over a period of seven years beginning in 2013, in equal installments.

***Percentage of expenditures dedicated to French- and English-language markets***

190. Astral and BCE stated that the percentage of the benefits to be allocated to the French-language market for the initiative "Responding to consumers" would be 37% of the full amount for the initiative.
191. Interveners noted that the social benefits package that would be expended in the French-language market does not reflect the value of the assets to be acquired in that market.
192. To be consistent with the Commission's general practice, the guidelines followed for the breakdown of the benefits should be the same for the social benefits as for the on-screen benefits. The breakdown of the tangible benefits relating to television is provided in the table set out in Appendix 3 to this decision. As a result, the Commission considers that the percentage of expenditures to be allocated to each language market should be revised so that the social benefits reflect the value of the assets to be acquired in each language market (i.e., 69% French-language market, 31% English-language market).
193. The Commission expects BCE to follow these guidelines when it submits its revised tangible benefits proposal, in particular for its consumer education initiative.

### **Intangible benefits package relating to television**

194. The Commission's policy regarding intangible benefits is articulated in its benefits framework (see Public Notice 1993-68). In that framework, the Commission stated that intangible benefits may be as significant as tangible benefits and, in some cases, of primary importance in the approval of transactions.
195. The Commission also stated that it would not give precedence to intangible benefits over tangible benefits as this may compromise its ability to assess the best possible proposal, given the specific circumstances of each ownership transfer application. Rather, the Commission uses a case-by-case approach, assessing each application on its own merits and taking into account both the tangible and intangible benefits proposed.

### ***Programming Champions***

196. In their application, Astral and BCE proposed as an intangible benefit the appointment of two new regional Programming Champions, one of whom would be an anglophone in Toronto, the other a francophone in Montréal. Each would oversee the development of new programs. The Commission has reviewed this initiative and considers it to be appropriate.
197. The Commission is of the view, however, that Astral and BCE did not provide adequate information on the mandate and the role that these Programming Champions would play to ensure that this initiative would be effective. Therefore, to ensure the effective implementation of this initiative and to provide support to independent producers, the Commission considers that this initiative should be made more concrete.
198. Accordingly, the Commission **directs** BCE to file by no later than **29 July 2013** a proposal clearly articulating the mandate for the Programming Champions, setting out expected outcomes and how results will be measured. In addition, the Commission **directs** BCE to include in its annual reports to the Commission the following information regarding the Programming Champions:
  - a detailed budget including the cost of the projects and travel expenses;
  - the number of projects funded; and
  - the number and identification of independent producers with whom they met over the course of the year.
199. The report will be published on the Commission's website.
200. The Commission notes that this initiative will be reviewed at the time of the next group licence renewal to assess its effectiveness. Should the Commission determine that BCE is not achieving the expected outcomes, it may consider imposing a condition of licence.

### **Regional offices**

201. Astral and BCE submitted that, should the Commission approve the transaction, they would maintain media headquarters in Montréal for French-language content and in Toronto for English-language content. In addition, they offered to develop new regional offices in Vancouver and Halifax, stating that this initiative would allow the combined BCE/Astral to better administer its programming funds in a way that would benefit all Canadians.
202. The majority of those who intervened on this issue were concerned about BCE's intentions to keep the proposed regional offices open in the long term and/or provide them with adequate funding to be able to play an effective role. Interveners also requested that the Commission obtain BCE's commitment that regional officers posted to these offices would be assigned clear mandates, authority and resources to be truly effective throughout the licence term. Finally, interveners underscored the need to open a regional office in Winnipeg, in addition to the two regional offices that Astral and BCE have proposed to implement in Halifax and Vancouver.
203. The Commission considers that this initiative is appropriate and that regional offices should be opened in Vancouver, Winnipeg and Halifax. It notes, however, that Astral and BCE did not provide additional information at the hearing in regard to the officers' mandate and the resources that would be allocated to them.
204. To ensure effective implementation of this initiative, the Commission **directs** BCE to establish regional offices in Vancouver, Winnipeg and Halifax, and to provide by no later than **29 July 2013** additional information clearly articulating the mandate and the budget for each regional office. It further **directs** BCE to file, for each regional office, an annual report that includes the following information:
  - a detailed budget including equipment, infrastructure and staffing levels;
  - the extent of territory covered by the office, and how the office is beneficial to the region and OLMCs;
  - the number of projects funded;
  - the programming budget; and
  - the number and identification of independent producers with whom regional staff met over the course of the year.

### **Other issues relating to television: Reporting requirements**

205. During the proceeding, many interveners requested that BCE be required to file reports on various expenditures, including but not limited to tangible benefits, and regional and independent production. At the hearing, the Commission presented a model report to the parties, including information on programs (title, category,

name, language, broadcast date, and channel) and producer (independent, production company, location, address, regional, OLMC). BCE agreed to the inclusion of a condition of licence relating to filing an annual report based on that model. The Commission has set out in Appendix 2 a **condition of licence** to that effect. The Commission **directs** BCE and Astral, as a **condition of approval**, to apply by no later than **29 July 2013** to add that condition of licence to the broadcasting licences for all television programming undertakings that will be operated by a BCE-related entity following the close of the transaction.

**Other issues relating to television: Requirements relating to Canadian programming expenditures and expenditures on programs of national interest for the Astral group of services**

206. In Broadcasting Decision 2012-241, the Commission renewed various Astral pay and specialty services as a group and imposed conditions of licence requiring it to reach a CPE level of 30% and a PNI expenditure level of 16% of the gross revenues for the preceding broadcast year for all services in the Astral designated group. Astral expressed the view that these levels remain appropriate, but provided no evidence to substantiate this claim.
207. Some interveners, including ADISQ and AQTIS et al., were concerned that the proposed divestitures from the Astral designated group would change the composition of the group and could result in a net loss of CPE and PNI to the system, particularly if the future buyers of the proposed divestitures request a reduction of these requirements from the Commission.
208. The Commission notes that the proposed divestiture of some of Astral's services would substantially change the composition of the Astral group of services.
209. In this regard, the Commission notes that Astral's CPE requirement was determined based on the individual CPE requirements of various Astral services that existed prior to its renewal under a group-based approach. Consistent with the group-based approach, an average of the three previous broadcast years was used to determine the appropriate CPE requirement. Similarly, the group's PNI expenditure requirement was determined based on the average PNI expenditures of the three previous broadcast years of the services within the group. Based on the above, the Commission is of the preliminary view that a minimum CPE requirement of 32% and a minimum PNI expenditure requirement of 18%, instead of the requirements imposed in Broadcasting Decision 2012-241, would be appropriate.
210. Accordingly, the Commission **directs** BCE and Astral, as a **condition of approval**, to file by no later than **29 July 2013** an application to revise Astral group's CPE and PNI percentages based on the remaining services within the Astral group and using the same methodology utilized to determine its current requirements.

### **Tangible benefits package relating to radio**

211. In the 1998 Commercial Radio Policy, the Commission required that parties seeking to acquire ownership or control of profitable radio undertakings make commitments to the development of Canadian talent in the form of tangible benefits of *no less than* 6% of the value of transactions. (emphasis added) As set out in Broadcasting Regulatory Policy 2010-499, the tangible benefits package must be allocated as follows:

- 3% to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5% to FACTOR or MUSICACTION;
- 0.5% to the Community Radio Fund of Canada (CRFC); and
- 1%, at the discretion of the purchaser, to any eligible CCD initiative, as defined in paragraph 108 of the 2006 Commercial Radio Policy.

### ***Position of Astral and BCE***

212. Astral and BCE proposed a tangible benefits package relating to radio consisting of 6% of the value of the transaction, and to allocate the benefits in a manner consistent with Broadcasting Regulatory Policy 2010-499 (see Appendix 4 to this decision). Astral and BCE also proposed to allocate the tangible benefits to English- and French-language initiatives in proportion to the value of the English- and French-language assets to be acquired. In addition, they provided a list of initiatives to which they proposed to allocate the discretionary portion of the tangible benefits package.

### ***Interventions***

213. Generally, interveners supported the proposed tangible benefits package.

214. The Canadian Council of Music Industry Associations (CCMIA) stated that CCD funds are best leveraged when allocated to music industry programs such as those developed by national and provincial not-for-profit music industry associations. It noted that those programs deliver direct benefits through programs and services to the Canadian-owned music sector. It requested either that BCE be encouraged to shift some of the discretionary tangible benefits to the national and provincial music industry associations (MIAs), or that the Commission mandate that a set percentage of all present and future acquisition benefits be allocated to national and provincial MIAs.

215. ADISQ expressed the view that BCE should contribute tangible benefits at a level of 9% of the value of radio assets involved in a transfer. It noted that in the 1998 Commercial Radio Policy, the Commission reduced the proportion of tangible benefits from 10% to 6% in anticipation of the introduction of digital technology, technical upgrades, improvements to programming, etc., that would result from



the ownership of multiple stations and the implementation of a financially strong radio industry. ADISQ stated that the radio industry is enviably profitable and submitted that the applicant is in a position to contribute a level of tangible benefits comparable to the level required of the television industry.

216. ADISQ submitted that the Commission has the flexibility to determine the appropriate level of tangible benefits in order to accurately reflect a transaction's scope and its impact on the broadcasting system. In regard to the present case, it argued that it would be unjustified for the Commission to require only the minimum percentage. In its view, to increase the level of tangible benefits from 6% to 9% would accurately reflect the scope of the transaction and would be in the public interest. ADISQ noted that this percentage could also be applied to the value of the assets to be divested. Alternately, it submitted that the Commission could require BCE to pay tangible benefits in the amount of 9% of the value of the Quebec radio assets, should it deem the applicant's request for an exception to the Common Ownership Policy in the Montréal market, as discussed above, to be warranted. ADISQ did not propose any changes to the proposed allocation of the benefits.

#### ***Commission's analysis and decisions***

217. In Broadcasting Decision 2010-942, the Commission approved a 9% tangible benefits package for Cogeco's acquisition of Corus's radio assets in Quebec, as proposed by Cogeco.
218. As was the case for the application denied in Broadcasting Decision 2012-574, the onus is on the applicant to demonstrate that approval of a proposed transaction is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction, and that the application represents the best possible proposal in the circumstances. In this proceeding, Astral and BCE proposed both tangible and intangible benefits. However, as discussed below, the Commission considers that the commitments proposed as intangible benefits are inadequate as they do not demonstrate that the proposal is the best possible one under the circumstances. The Commission further notes that the proposed transaction represents an unprecedented level of concentration, and considers that the benefits resulting from the transaction should be commensurate with its size and nature.
219. Consequently, the Commission considers that BCE should increase its level of tangible benefits to take into account the size and nature of the transaction, the aggregate profitability of the stations acquired and the inadequacy of the proposed intangible benefits. The Commission is of the view that 7% would be the appropriate level. Accordingly, the Commission **directs** BCE to file by no later than **29 July 2013** a revised tangible benefits package, ensuring that it represents 7% of the value of the transaction as determined by the Commission (refer to the table in paragraph 153 above for details).

220. In line with the required allocation of tangible benefits set out in Broadcasting Regulatory Policy 2010-499, and given the increase in the tangible benefits to 7%, the tangible benefits must now be allocated as follows:
- 3.5% to the Radio Starmaker Fund or Fonds Radiostar;
  - 1.75% to FACTOR or MUSICACTION;
  - 0.58% to the CRFC; and
  - 1.17%, at the discretion of BCE, to any eligible CCD initiative, as defined in paragraph 108 of the 2006 Commercial Radio Policy.
221. The Commission notes that Astral and BCE's proposal for the discretionary portion of the tangible benefits relating to radio fulfills certain aspects of the Commission's requirements relating to CCD contributions, as it provides funding to the following eligible initiatives:
- national, provincial and territorial MIAs;
  - schools and educational institutions that are accredited by provincial authorities, to the benefit of music and journalism students; and
  - initiatives for the production and promotion of local music and local musical artists, including initiatives relating to artist development.
222. It further notes, however, that no funds are allocated to independent parties dedicated to producing new spoken word content that would otherwise not be produced for broadcast and that could contribute to the promotion of Canadian music artists, including emerging artists.
223. The Commission considers that the CCMIA made a compelling case that it offered significant services to Canadian artists and that its projects represent eligible CCD initiatives.
224. The Commission is of the view that Canadian music artists, including Canadian emerging artists, could benefit from additional promotional efforts on the part of broadcasters. Such results could be achieved through increased airplay and the production by third parties of spoken word content intended to promote emerging Canadian artists. Accordingly, the Commission considers that it would be appropriate for BCE to direct a portion of the additional funds to such initiatives.
225. Since the value of the package and its discretionary portion will be higher as a result of the increase in the value of the transaction and the percentage of benefits imposed, BCE must allocate the additional funds to eligible CCD initiatives.

226. In light of the above, the Commission **directs** BCE to file by no later than **29 July 2013** a revised proposal for the discretionary portion of the tangible benefits relating to radio, with an emphasis on direct support to Canadian music artists, including emerging Canadian artists and MIAs such as CCMIA, and the production of new spoken word content by independent parties devoted to the promotion of Canadian music artists, including emerging artists. The revised proposal should be allocated to English- and French-language initiatives in a proportion that reflects the value of the assets to be acquired.
227. Consistent with its general practice, the Commission also **directs** BCE to file an annual report on tangible benefits relating to radio that result from the present decision.

### **Intangible benefits relating to radio**

#### ***Local programming***

228. The 2006 Commercial Radio Policy sets out that all applicants are required in applications for the transfer of ownership to address local programming and to describe how the service they provide meets the particular needs and interests of their local communities.

#### Position of Astral and BCE

229. Astral and BCE made the following commitments in regard to local programming:
- to add BCE's stations to the Burli system, which will enhance the diversity of news coverage available to all stations, and will allow investment to further enhance the Burli system;
  - to share news, sports and business programming among stations, which has the potential to strengthen the diversity of programming in the system as it provides an alternative to non-Canadian syndicated programming;
  - to share programming with independent small market stations and campus and community stations; and
  - to hire a small market programming specialist who will be responsible for developing sustainable business models for small-market radio, conducting audience research, identifying best practices and improving local reflection.

#### Interventions

230. Vaxination Informatique (Vax) noted that Astral and BCE proposed to manage the English-language radio assets from Toronto, and the French-language assets from Montréal. It submitted that this centralization will not benefit listeners located outside those “centres of the universe.” According to Vax, big companies tend to increase network programming in order to save on costs, resulting in an increase in programming originating from a centre. It stated that the real value of a local station is its ability to provide local content.
231. PIAC et al. expressed the concern that BCE’s commitments regarding content reduce source diversity and diminish the role of independent broadcasters in contributing to source diversity. They argued that repurposing content across media platforms does not help achieve the policy objectives behind ensuring a diversity of voices. According to PIAC et al., a multiplicity of sources would better serve the interests of diversity and local reflection by creating competition between sources and providing Canadians with a wider range of programming.
232. The Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) and ADISQ stated that they were pleased with BCE’s commitment to maintain a French-language radio programming team in Montréal. However, they requested that the Commission question BCE on the team’s mandate and its composition in order to ensure that a change in control from Astral to BCE would not result in a negative impact on the French-language musical content broadcast on the group’s stations in Quebec. ADISQ noted that BCE/Astral stations located in Quebec should offer Quebecers, whose culture it described as unique, access to diverse programming, and, more specifically, to Canadian musical content that has a local and regional flavour.

#### Commission's analysis and decisions

233. As set out in Public Notice 1993-68, only those initiatives that would not be realized without approval of the proposed transaction are viewed as benefits. In order to qualify as a benefit, the proposed expenditure must be incremental. Expenditures that would normally be considered ongoing normal responsibilities of the current licensee will not be accepted as benefits unless that licensee, because of financial circumstances, is unable to implement the initiative or reasonably planned to delay such an improvement beyond the time frame proposed by the purchaser.
234. The Commission notes that the Burli system is already in operation for Astral’s stations. It therefore does not consider that adding BCE’s stations to the Burli system is incremental.
235. In addition, Astral stated that, on average, its English-language radio stations broadcast 90 hours of local programming each broadcast week, and that its French-language stations broadcast 70 hours of local programming each broadcast week. Astral did not commit to more local programming hours as a result of the

transaction, but stated that it will slightly increase local content on radio stations and on their websites.

236. The Commission notes that the nature of radio is to serve local communities. Given that the stations acquired currently exceed the minimum requirements for local programming and that it is in the licensee's best interest to provide a maximum amount of local programming, the Commission considers that it is not necessary to impose conditions of licence relating to specific requirements at this time.
237. In regard to content sharing, Astral and BCE specified that the content shared with community stations would target French-language community stations in OLMCs and would not consist of fully packaged programming. However, Astral and BCE did not discuss this proposal with the Alliance des radios communautaires du Canada, as indicated in the application. As such, whether this proposal will benefit the Canadian broadcasting system is difficult to assess.
238. Finally, the Commission notes that although Astral does not currently have a small-market programming specialist, it has a small-market committee to share best practices. While a small market programming specialist would no doubt benefit BCE's small market stations, the Commission considers this to be a cost of doing business for a major group that owns the most stations in the country.
239. The Commission is of the view that Astral and BCE did not demonstrate how their proposal presents any improvement or incrementality over current practices. They did not make any firm commitments to increase local programming, spoken word or news levels, or to enhance local reflection through spoken word programming or musical content. Consequently, the Commission considers these proposals to be a cost of doing business and that they therefore cannot be considered intangible benefits resulting from this transaction.
240. The Commission notes, however, that BCE's revised tangible benefits package will provide for the production by third-parties of new spoken word content devoted to the promotion of English- and French-language Canadian artists, including emerging artists, and will therefore benefit Canadian audiences.

#### ***Emerging Canadian artists***

241. As set out in the 2006 Commercial Radio Policy, applicants for transfer of ownership or control of radio stations are asked to make specific commitments to provide airplay for and to promote emerging Canadian artists and their music. The Commission then adopted definitions of English- and French-language emerging Canadian artists. These definitions are set out in Broadcasting Regulatory Policy 2011-316. These definitions provide the necessary tools for measuring the presence of emerging Canadian artists on Canadian radio stations. In that regulatory policy, the Commission concluded that Canadian radio stations programmed a reasonable amount of this music and that it would not undertake a

public process to examine if it should require the airplay of a minimum level of music by Canadian emerging artists at that time.

#### Position of Astral and BCE

242. Astral and BCE argued that the Bell Media Indie Artist Initiative will provide independent artists with exposure through airplay, advertising time and promotion. A total of 35 stations in 26 markets in the Contemporary Hit Radio CHR/Top 40, Hot Adult Contemporary (AC), AC and Hot AC/Classic rock formats will participate. The combined BCE/Astral will expand the program to two artists per month – one CHR and one Hot AC/AC. The promotional component of the initiative will include ten 30-second commercial spots for the month. Independent artists will be able to submit works to a panel of station program directors.
243. Astral and BCE also made the commitment that 29 stations in the CHR, Hot AC and Modern rock formats will devote 25% of Canadian musical content and 25% of French-language vocal music (FVM) to emerging artists, to be measured over the broadcast week. They argued that this represents a significant increase to current levels. As the initiative is tied to the participating stations' format, Astral and BCE would not accept these commitments by condition of licence. They stated, however, that the combined BCE/Astral would report annually on emerging Canadian artist airplay. Airplay resulting from the Bell Media Indie Artist initiative would be included in the 25% of Canadian musical content devoted to emerging artists.

#### Interventions

244. SPACQ and ADISQ noted that emerging artists exist in all genres of music, regardless of radio formats. They expressed the view that BCE's commitment to devote 25% of francophone airplay to emerging artists should not be limited to the NRJ stations, but extend to all of Astral's stations in Quebec, or at least to the Rouge FM stations. They also expressed the view that BCE should provide monthly reports on emerging artist airplay, including the selections played, the time when they were played and the diversity of artists played. They submitted that those reports should be made public.
245. The CCMIA encouraged BCE to expand its Emerging Indie Artist Initiative to include more than two artists per month, and to increase the number of formats for this initiative. It noted that there are many talented emerging independent artists in the Country and Rock genres, for instance, who would also greatly benefit from such exposure.
246. It further noted that both the Emerging Indie Artist Initiative and BCE's commitment to devote 25% of airplay to emerging Canadian artists will be most effective if the Canadian artists at the heart of these initiatives are aired and promoted during times of highest listening. The CCMIA therefore strongly

encouraged BCE to program emerging Canadian artists during these times and avoid as much as possible programming emerging artists during those airtimes that traditionally experience low listening. SPACQ and ADISQ shared this view.

247. Diversity Emerging Music Collective argued that the initiative does not take into account the diversity of emerging artists.

#### Commission's analysis and decisions

248. The Commission is of the view that specific commitments to provide airplay for and to promote emerging Canadian artists and their music are significant elements to consider in assessing the quality of applications for new broadcasting licences during competitive processes and for transfers of ownership and control.
249. In regard to English-language stations, the Commission notes that Astral and BCE's proposal to devote 25% of Canadian musical content to emerging artists represents a base minimum. In regard to French-language stations, Astral and BCE's proposal to devote 25% of FVM to emerging artists represents a slight improvement to the industry average. The Commission notes their commitments but considers that there is room for improvement.
250. As stated above, the Commission directed BCE to file a revised tangible benefits proposal that would result in increased financial support to emerging artists and permit the production of additional musical content and spoken word content devoted to the promotion of Canadian artists, including emerging artists. The Commission is of the view that the combined BCE/Astral will be in a unique position to support this increased production with significant promotional efforts and airplay.
251. In this regard, the Commission **directs** BCE to file a yearly report on the Bell Media Indie Artists Initiative and on emerging artist airplay commitments. The information that the licensee should include in its report is set out in Appendix 5 to this decision.

#### ***New technologies for the distribution of audio programming***

252. In the 2006 Commercial Radio Policy, the Commission concluded that the radio industry is in a period of uncertainty as it comes to grips with the challenges and opportunities that will be provided by new technologies for the distribution of audio programming. It stated that many radio broadcasters are themselves exploring ways of using new distribution platforms to complement the service that their conventional radio stations provide.
253. The Commission further stated that in addition to continuing to monitor how new distribution technologies for audio programming are affecting the radio industry, it also intends to question radio licensees in ownership transfer proceedings about their plans to employ new distribution platforms to the benefit of the Canadian broadcasting system.

254. Astral and BCE stated that the Player, an on-demand music service, provides Canadians with access to a broad range of musical content in audio and video formats, weekly features, exclusive content and customizable playlists, and is connected to social media. Adding BCE's stations will expose more Canadians to emerging artists and more diverse musical content, and will allow for faster development. The Player would be available to all Canadians. Emerging artists would be promoted through an "Artist of the Month" feature. The combined BCE/Astral would spearhead Canadian initiatives to develop a digital radio format and new mobile radio applications.
255. The CCMIA noted the potential of the Player to increase the exposure of Canadian independent artists on diverse new media platforms. ADISQ noted that the Player already exists and requested that the Commission question the applicant on the extent to which the addition of BCE's stations to the Player will bring additional benefits to Canada's community of established and emerging artists.
256. Given that Astral has already launched the Player outside of the context of this transaction, the Commission finds that it cannot be considered an intangible benefit resulting from the transaction.

**Unfulfilled tangible benefits resulting from previous transactions**

257. The Commission **directs** BCE to meet all unfulfilled tangible benefits commitments made by Astral and its subsidiaries as a result of previous ownership transactions. The unfulfilled commitments, as of 31 August 2012, are set out below:

Commission document	Unfulfilled commitment
Broadcasting Decision 2006-684 (Acquisition of assets of CILK-FM Kelowna and its transmitters CILC-FM Magna Bay and VF2329 Big White Mountain by Standard Radio Inc.)	\$93,598
Broadcasting Decision 2007-359 (Acquisition by Astral Media Radio G.P. of Standard Radio Inc.'s radio and television programming undertakings across Canada)	(Radio) \$17,553,021 (Television) \$374,815
Broadcasting Public Notice 2007-99 (Transfer of ownership and control of MusiquePlus inc.)	\$971,440
Broadcasting Information Bulletin 2012-109 (Change to the effective control of Shore Media Group Inc.)	\$727,048
<b>Total</b>	<b>\$19,719,922</b>

**CONCLUSION**

258. In light of all of the above, the Commission **approves** the application by Astral Media inc. and its licensed broadcasting subsidiaries for authority to change the effective control of Astral's broadcasting undertakings to BCE Inc. The



Commission concludes that the transaction as modified in this decision is in the public interest and advances the objectives set out for the Canadian broadcasting system in the Act.

259. The Commission wishes to thank all who participated in this proceeding. The thoughtfulness and clarity reflected in the written submissions and presentations at the hearing greatly assisted the Commission in its deliberations.

Secretary General

#### **Related documents**

- *Various radio stations and specialty services – Acquisition of assets (corporate reorganization within BCE Inc.)*, Broadcasting Decision CRTC 2013-309, 27 June 2013
- *Various radio stations and specialty services – Acquisition of assets (corporate reorganization within Astral Media inc.)*, Broadcasting Decision CRTC 2013-308, 27 June 2013
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2013-106, 6 March 2013, as amended by *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2013-106-1, 10 May 2013
- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2012-574, 18 October 2012
- *Leafs TV, Gol TV, NBA TV Canada, Mainstream Sports and Live Music Channel – Change in effective control*, Broadcasting Decision CRTC 2012-443, 16 August 2012
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – Implementation of the regulatory framework relating to vertical integration and other amendments*, Broadcasting Order CRTC 2012-408, 26 July 2012
- *Amendments to various regulations – Implementation of the regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2012-407, 26 July 2012
- *Astral Media inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2012-241, 26 April 2012

- *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2012-109, 20 February 2012
- *AM radio stations in Montréal*, Broadcasting Decision CRTC 2011-721, 21 November 2011
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011, as amended by Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011
- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Transfer of effective control of various commercial radio programming undertakings from Corus Entertainment Inc. to Cogeco inc.*, Broadcasting Decision CRTC 2010-942, 17 December 2010
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *A guide to the CRTC application process for change in effective control and certain transfers of shares of broadcasting undertakings as well as for the acquisition of assets of broadcasting undertakings*, Broadcasting Information Bulletin CRTC 2008-8-1, 23 December 2010
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *Allocation of the transaction value in changes in the effective control of broadcasting undertakings – Information bulletin*, Broadcasting Public Notice CRTC 2008-57, 30 June 2008
- *Diversity of voices – Regulatory Policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Acquisition of assets*, Broadcasting Decision CRTC 2007-359, 28 September 2007

- *Applications processed pursuant to the streamlined procedure*, Broadcasting Public Notice CRTC 2007-99, 5 September 2007
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *CILK-FM Kelowna and its transmitters CILC-FM Magna Bay and VF2329 Big White Mountain - Acquisition of assets*, Broadcasting Decision CRTC 2006-684, 20 December 2006
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements*, Public Notice CRTC 1999-205, 23 December 1999
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

## Appendix 1 to Broadcasting Decision CRTC 2013-310

### Conditions of approval relating to the change in the effective control of Astral Media inc.'s broadcasting undertakings to BCE Inc. approved in *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013

1. The Commission **directs** BCE Inc. to transfer the interim management and control of the television programming undertakings The Family Channel, TELETOON Retro, TÉLÉTOON Rétro, TELETOON /TÉLÉTOON, Disney XD, Disney Junior, Cartoon Network, Historia, Séries+, MusiquePlus and MusiMax to a trustee pursuant to the terms of the voting trust agreement addressed in a letter of approval issued 27 June 2013, by no later than **29 July 2013**.
2. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all television programming undertakings and broadcasting distribution undertakings, as applicable, that will be operated by a BCE-related entity following the close of the transaction in order to add conditions of licence 1, 2, 5, 6, 7, 15 and 16 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
3. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all television programming undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add conditions of licence 8 and 9 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
4. The Commission **directs** BCE Inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all radio programming undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add condition of licence 17 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
5. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all television programming undertakings and broadcasting distribution undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add condition of licence 3 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
6. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all television programming undertakings and broadcasting distribution undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add condition of licence 4 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.

7. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for those Astral television programming undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add conditions of licence 11, 12 and 13 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
8. The Commission **directs** BCE Inc. to transfer the interim management and control of the radio programming undertakings CHHR-FM Vancouver, CKZZ-FM Vancouver, CISL Vancouver, CFQX-FM Selkirk, CHBM-FM Toronto, CKQB-FM Ottawa-Gatineau, CJOT-FM Ottawa-Gatineau, CKCE-FM Calgary, CHIQ-FM Winnipeg, and CFJX-FM Toronto to a trustee pursuant to the terms of the voting trust agreement addressed in a letter of approval issued 27 June 2013, by no later than **29 July 2013**.
9. The Commission **directs** BCE Inc. to apply by no later than **29 July 2013** to amend the broadcasting licence for CKGM Montréal in order to add conditions of licence 19, 20, 21 and 22 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
10. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all television programming undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add condition of licence 10 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
11. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all radio programming undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add condition of licence 18 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
12. The Commission **directs** BCE Inc. and Astral Media inc. to apply by no later than **29 July 2013** to amend the broadcasting licences for all television programming undertakings that will be operated by a BCE-related entity following the close of the transaction in order to add condition of licence 14 set out in Appendix 2 to *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013.
13. The Commission **directs** BCE Inc. and Astral Media inc. to file by no later than **29 July 2013** an application to revise the Astral group's Canadian Programming Expenditures of Programs of National Interest percentages based on the remaining services within the Astral group and using the same methodology utilized to determine its current requirements.

## **Appendix 2 to Broadcasting Decision CRTC 2013-310**

### **Conditions of licence for the licensed programming and distribution undertakings operated by BCE Inc.-related entities following the close of the transaction approved in *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013**

#### **Conditions of licence applicable to television programming undertakings and broadcasting distribution undertakings**

1. The licensee shall not:
  - a. require an unreasonable rate (e.g., not based on fair market value);
  - b. require a party that it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
  - c. require an excessive activation fee or minimum subscription guarantee; or
  - d. impose, on an independent party, a most favoured nation clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.
2. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:
  - a. historical rates;
  - b. penetration levels and volume discounts;
  - c. the packaging of the service;
  - d. rates paid by unaffiliated broadcasting distribution undertakings for the programming service;
  - e. rates paid for programming services of similar value to consumers;
  - f. the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
  - g. the retail rate charged for the service on a stand-alone basis; and
  - h. the retail rate for any packages in which the service is included.
3. The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution

- undertaking within five days following the execution of the agreement by the parties.
4. If the licensee has not renewed an affiliation agreement to which it is a party with a licensed or exempt Canadian television programming undertaking or Canadian broadcasting distribution undertaking within the 120 days preceding the expiry date of the agreement, and if the other contracting party has confirmed its intention to renew the agreement, the licensee shall refer the matter to the Commission for dispute resolution under sections 12 to 15 of the *Broadcasting Distribution Regulations*.

**Conditions of licence applicable to television programming undertakings**

5. The licensee shall not:
  - a. require minimum penetration or revenue levels that force distribution of a service on the basic tier or in a package that is inconsistent with the service's theme or price point;
  - b. refuse to make programming services available on a stand-alone basis (i.e., requiring the acquisition of a program or service in order to obtain another program or service); or
  - c. impose terms that prevent an unrelated distributor from providing a differentiated offer to consumers.
6. The licensee shall not refuse to make available or condition the availability of or carriage terms for any of its licensed programming services to any broadcast distribution undertaking (BDU) on whether that BDU agrees to carry any other separately licensed programming service, provided that this condition does not prevent or limit the right or ability of the licensee to offer BDUs multiservice or other discounts, promotions, rebates or similar programs.
7. The licensee shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent, or is designed to create incentives that would effectively prevent, another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.
8. The licensee shall negotiate with broadcasting distribution undertakings (BDUs) for non-linear multiplatform rights to the content broadcast on the licensee's programming service at the same time as linear rights for its programming service and provide those rights to BDUs on a timely basis and on commercially reasonable terms. For certainty, nothing in this condition of licence shall prevent or otherwise restrict the licensee from requesting compensation in exchange for making such non-linear rights available to BDUs.

9. The licensee shall provide a minimum of 90 days written notice of the impending launch of a new programming service to all broadcasting distribution undertakings. Such notice will be accompanied by an offer which sets out the general terms of carriage of the programming service to be launched.
10. a) The licensee shall pay tangible benefits in respect of any shortfall in the tangible benefits for the television programming undertakings to be divested by BCE Inc. (BCE) in accordance with *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013, between the \$72.69 million attributed to those undertakings and the aggregate value of the tangible benefits to be paid by purchasers of those undertakings as determined by the Commission in the decisions approving the transfer of those undertakings by BCE (“shortfall”).  
  
b) In the event of a shortfall, the licensee shall file with the Commission a proposal for the payment of the resulting tangible benefits within 30 days of the Commission’s decision approving the transfer of the last of those undertakings by BCE.
11. The licensee shall adhere to a terms of trade agreement with the Canadian Media Production Association for English-language services.
12. The licensee shall adhere to a terms of trade agreement with the Association québécoise de la production médiatique for French-language services.
13. The licensee shall enter into good faith terms of trade negotiations with the Association des producteurs francophones du Canada and shall report regularly to the Commission on its progress in this regard.
14. The licensee shall, by 30 November of each year, provide for the previous broadcast year a report in a form acceptable to the Commission that contains information on the programs broadcast, specifying the program category, language, origin and region, as well as whether the program was produced in an official language minority community.

**Conditions of licence applicable to broadcasting distribution undertakings**

15. Where the licensee provides its related programming services with access to multiple distribution platforms, it shall offer reasonable terms of access that are based on fair market value to non-related programming services.
16. The licensee shall give unrelated programming services marketing support that is comparable to what is given to similar services, including related services.



**Conditions of licence applicable to radio programming undertakings**

17. The licensee shall provide commercially reasonable access to advertising availabilities to unrelated operators of broadcasting undertakings and telecommunications service providers.
18. a) The licensee shall pay tangible benefits in respect of any shortfall in the tangible benefits for the radio broadcasting undertakings to be divested by BCE Inc. (BCE) in accordance with *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013, between \$11.05 million attributed to those undertakings and the aggregate value of the tangible benefits to be paid by purchasers of those undertakings as determined by the Commission in the decision approving the transfer of those undertakings by BCE (“shortfall”).
  - b) In the event of a shortfall, the licensee shall file with the Commission a proposal for the payment of the resulting tangible benefits within 30 days of the Commission’s decisions approving the transfer of the last of those undertakings by BCE.

**Conditions of licence applicable to CKGM Montréal**

19. The licensee shall operate CKGM Montréal as an English-language commercial AM radio programming undertaking whose programming is dedicated predominantly to all aspects of sports, including coverage of professional and amateur sports events, sportscasts, magazine shows, interviews, commentaries, documentaries, audience participation and open-line programming, instruction and training programs and other programs that promote physical fitness. CKGM will devote its programming principally to Canadian sports coverage.
20. The licensee shall ensure that not less than 90% of the programming broadcast during each broadcast day consists of programs drawn from content categories 1, 4 and 5 as defined in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, as amended from time to time.
21. The licensee shall ensure that not less than 96 hours of the programming broadcast during the broadcast week is devoted to local programming as defined in paragraph 207 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.
22. The licensee shall contribute \$245,000 over the next seven broadcast years (\$35,000 per broadcast year) to Canadian content development initiatives that will benefit the radio sector, with an emphasis on emerging artists from Montréal’s English official language minority community.

## Appendix 3 to Broadcasting Decision CRTC 2013-310

### Tangible benefits package relating to television, as proposed in the application (in millions of dollars)

<b>On-screen benefits expenditures by linguistic market</b>					
<b>Initiative</b>	<b>French-language</b>	<b>%</b>	<b>English-language</b>	<b>%</b>	<b>Total</b>
Harold Greenberg Fund	18.80		5.00		23.80
Youth programming initiatives	4.90		-		4.90
Telefilm Canada	1.75		3.25		5.00
Television Format Development initiative (French-language market)*	4.00		-		4.00
Programs of national interest	43.65		24.56		68.21
<b>On-screen benefits – Total</b>	<b>73.10</b>	<b>69.02 (68.60)**</b>	<b>32.81</b>	<b>30.98 (31.40)**</b>	<b>105.91</b>
<b>Social benefits expenditures by linguistic market</b>					
<b>Promotion in a multiplatform world</b>					
<b>Initiative</b>	<b>French-language</b>	<b>%</b>	<b>English-language</b>	<b>%</b>	<b>Total</b>
Canadian film festivals*	0.92		3.45		4.37
CAFDE Promotion Fund*	1.00		2.00		3.00
Media Training Programs	0.36		2.33		2.69
Les FrancoFolies de Montréal	1.75		-		1.75
Canadian Women in Communications	0.20		0.20		0.40
Academy of Canadian Cinema & Television	0.20		1.05		1.25
<b>Sub-total</b>	<b>4.43</b>	<b>32.91 (31.40)**</b>	<b>9.03</b>	<b>67.09 (68.60)**</b>	<b>13.46</b>
<b>Responding to consumers (French- and English-language markets combined)</b>					
<b>Initiative</b>					<b>Total</b>
Consumer Education*					2.73
Canadian Broadcasting Participation Fund					2.00
Canadian Broadcast Standard Council					0.50
<b>Sub-total</b>					<b>5.23</b>
<b>Social benefits – Total</b>					<b>18.69</b>
<b>Total tangible benefits relating to television</b>					<b>124.6</b>
*Note: Initiatives for which BCE is required to submit replacement options					
**Due to the national scope of the present transaction, the Commission considers that these percentages reflect the ideal breakdown of the assets to be acquired across English- and French-language markets.					

## Appendix 4 to Broadcasting Decision CRTC 2013-310

### Tangible benefits package relating to radio as proposed in the application (in millions of dollars)

Initiative	Amount	Annual amount
<b>English-language</b>		
<b>Mandatory contributions</b>		
Radio Starmaker Fund	16.230	2.32
FACTOR	8.115	1.16
Community Radio Fund of Canada	2.705	0.39
<b>Subtotal</b>	<b>27.050</b>	<b>3.87</b>
<b>Discretionary contributions</b>		
Breakthrough Canada Showcase Series	2.190	0.31
Canadian Music Week	1.040	0.15
Emerging Artist Development Program	0.700	0.10
MusiCounts	0.500	0.07
MegaMusic Canada	0.500	0.07
National Music Centre	0.240	0.03
English-language Journalism Scholarships	0.240	0.03
<b>Subtotal</b>	<b>5.410</b>	<b>0.77</b>
<b>Total English-language initiatives</b>	<b>32.460</b>	<b>4.63</b>
<b>French-language</b>		
<b>Mandatory contributions</b>		
Fonds Radiostar	8.790	1.26
MUSICACTION	4.395	0.63
Fonds canadien de la radio communautaire	1.465	0.21
<b>Subtotal</b>	<b>14.650</b>	<b>2.09</b>
<b>Discretionary contributions</b>		
Breakthrough Canada Showcase Series	1.040	0.15
Top Musique Québec Application	0.750	0.11
Festivals	0.640	0.09
French-language Journalism Scholarships	0.500	0.07
<b>Subtotal</b>	<b>2.930</b>	<b>0.42</b>
<b>Total French-language initiatives</b>	<b>17.580</b>	<b>2.51</b>
<b>Total tangible benefits relating to radio</b>	<b>50.04</b>	<b>7.14</b>

## **Appendix 5 to Broadcasting Decision CRTC 2013-310**

### **Reporting requirements**

#### **Reporting requirements for the Bell Media Indie Artist Initiative**

In addition to the BCE Inc. (BCE) stations currently participating in the initiative, BCE committed that the following Astral Media inc. stations would also participate in the initiative: CHSU-FM Kelowna, CJMG-FM Penticton, CICF-FM Vernon, CIBK-FM Calgary, CFMG-FM St. Albert, CKMM-FM Winnipeg, CKLH-FM Hamilton, CIQM-FM London, CHRE-FM St. Catharines, CKFM-FM Toronto, CFVM-FM Amqui, CJDM-FM Drummondville, CHRD-FM Drummondville, CKTF-FM Gatineau, CIMF-FM Gatineau, CKMF-FM Montréal, CITÉ-FM Montréal, CJFM-FM Montréal, CHIK-FM Québec, CITF-FM Québec, CIKI-FM Rimouski, CJOI-FM Rimouski, CJMM-FM Rouyn-Noranda, CJAB-FM Saguenay, CFIX-FM Saguenay, CIMO-FM Sherbrooke, CITÉ-FM-1 Sherbrooke, CIGB-FM Trois-Rivières, CHEY-FM Trois-Rivières, CJMV-FM Val d'Or, CKBC-FM Bathurst, CIBX-FM Fredericton, CIKX-FM Grand Falls, CJCJ-FM Woodstock and CKTO-FM Truro.

The annual report covering the broadcast year (September to August) on this initiative should include the following information:

- the artists' names for each month for the stations that operate within Contemporary Hit Radio and Hot Adult Contemporary formats;
- the singles' titles;
- the number of monthly spins, on a station by station basis;
- the number of promotional spots broadcast, as well as the dates and times of broadcast, on a station by station basis; and
- any other promotional activity of the artists of the month on behalf of the stations, i.e. interviews, station performances, etc.

#### **Reporting requirements for BCE Inc. emerging artist airplay commitments**

BCE Inc. (BCE) committed that the following stations would devote 25% of Canadian musical selections each broadcast week to selections from Canadian emerging artists: CHUM-FM Toronto, CFBT-FM Vancouver, CIOO-FM Halifax, CJCH-FM Halifax, CFLY-FM Kingston, CKPT-FM Peterborough, CHBE-FM Victoria, CFCA-FM Kitchener, CIKX-FM Grand Falls, CKTO-FM Truro, CJFM-FM Montréal, CIQM-FM London, CKFM-FM Toronto, CKMM-FM Winnipeg, CFMG-FM St. Albert, CIBK-FM Calgary, CHSU-FM Kelowna, CICF-FM Vernon and CJMG-FM Penticton.

BCE committed that the following stations would devote 25% of French-language vocal musical selections each broadcast week to selections from Canadian emerging artists: CKMF-FM Montréal, CJAB-FM Saguenay, CHIK-FM Québec, CJMM-FM

Rouyn-Noranda, CIGB-FM Trois-Rivières, CJMV-FM Val d'Or, CKTF-FM Gatineau, CIMO-FM Sherbrooke, CJDM-FM Drummondville and CIKI-FM Rimouski.

The annual report for BCE's emerging artist airplay commitments should include the following information on a station by station basis for each broadcast week:

- artist name;
- title of the musical selection;
- number of spins for each musical selection;
- total Canadian or French-language vocal musical selections played.

The report should also specify, for each musical selection identified, the additional following information where applicable:

- for English-language musical selections, if a recording by the artist has appeared in one of the charted positions referenced in paragraph 5 of *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011, the title of that recording and the date it first reached the relevant position; and
- for French-language musical selections, if an album by the artist has reached Gold Record status according to SoundScan or has been marketed commercially, the date this status was first reached or the album was released for marketing and the title of the album.

The licensee should also specify this information on the music lists it provides to the Commission pursuant to section 9(3) of the *Radio Regulations, 1986*.