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Regulatory

April 19, 2018

VIA GC Key

Mr. Claude Doucet
Secretary-General
CRTC
1 Promenade du Portage
Les Terrasses de la Chaudière
Central Building
Gatineau, QC
K1A 0N2

Dear Mr. Doucet:

Subject: **Broadcasting Notice of Consultation CRTC 2018-95 - Application by Bell Media Inc. (Bell), on behalf of Corus Entertainment Inc. (Corus), for authority to effect a change in the ownership and effective control of 8504644 Canada Inc. (8504644) and 8504652 Canada Inc. (8504652), the respective licensees of the French-language discretionary services Historia and Séries+**

Reference: **Application 2017-1060-9**

1. The Canadian Cable Systems Alliance ("CCSA") speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 110 companies operating from sea to sea to sea, including across the North.

2. CCSA has had the opportunity to review, in draft, the intervention of Cogeco Communications Inc. ("Cogeco"), on behalf of its subsidiary Cogeco Connexion inc., in response to the subject application. CCSA fully supports and agrees with Cogeco's submissions in its intervention.

3. While CCSA does not expressly oppose the subject application, it does have serious concerns about Bell Media, Inc. ("Bell")'s re-acquisition of services that it previously divested, in 2013, in accordance with a divestiture plan for French-

language programming assets that had been agreed upon with the Competition Bureau in the context of its prior acquisition of Astral Media.[1]

4. CCSA appreciates that Bell's viewing and subscription revenue shares of the national French-language television market may have diminished marginally, even with its proposed re-acquisition of Historia and Series+, as compared to 2013, and may fall under the Commission's relevant thresholds for comprehensive review.

5. Nonetheless, the smaller, independent BDUs which CCSA represents have real, practical concerns with their ability to provide their customers with the flexibility to choose from amongst Bell's French-language services and to offer those services at reasonable prices. Bell's re-acquisition of these two services exacerbates those concerns.

6. Given its size, Bell already is in a clearly dominant position in its commercial negotiations with CCSA members. This dominance will only increase should the Commission permit Bell to include these services in its already large stable of discretionary services.

7. As matters stand today, as a result of that dominance and the effect of Penetration-Based Rate Cards that Bell has been able to impose on them, CCSA members face dramatic increases to wholesale rates when they choose to offer a "skinny basic" service to their customers.

8. That is because, once a "skinny basic" service is introduced, any legacy basic service no longer achieves 100% penetration of the BDU's entire subscriber base, a fact that triggers application of Bell's Penetration Based Rate Cards. That is true for any discretionary services that are offered on the BDU's legacy basic service but are not included in the new "skinny basic".

9. That fact, alone, has prevented some of CCSA's Quebec members from introducing a "skinny basic" service for the benefit of their customers.

10. Similarly, the rate cards that Bell, by virtue of its dominant power, has been able to impose on CCSA members have made the introduction of flexible distribution in small, less-penetrated packages and stand-alone offerings economically prohibitive.

[1] *See* Supplementary Brief at Appendix 1 to Bell application "Transfer of Effective Ownership and Control of Historia and Séries+", November 8, 2017 at para. 21.

11. In short, Bell exercises its power, whenever possible, to protect its legacy carriage by smaller, less powerful BDUs.

12. Due to the limited amount of the French-language programming services available, the effect of such practices on smaller BDUs in the Quebec market is even more pronounced than the corresponding effect in English-language markets.

13. As Bell's dominance has grown, commercial negotiations for renewal of affiliation agreements have become increasingly protracted and difficult. In light of that fact, CCSA members are especially reliant upon all of the protections available under the *Wholesale Code* in their renewal negotiations with Bell.

14. In that respect, CCSA notes that the "Standard conditions of licence, expectations and encouragements for discretionary services" at Appendix 2 to Broadcasting Regulatory Policy CRTC 2016-436 do not deal with any of the competitive issues or offer any of the competitive safeguards that are present in the *Wholesale Code*.

15. While some competitive safeguards are offered in the Conditions of Licence imposed on Bell's discretionary services as a result of Broadcasting Decision CRTC 2017-144, "Bell Media Inc. – Licence renewals for French-language television services", [2] they do not provide all of the safeguards set out in the *Wholesale Code*.

16. So, the complete set of existing Conditions of Licence applicable to Bell's discretionary services falls well short of the array of competitive protections available to CCSA members under the *Wholesale Code*.

17. For example, in contrast to s. 4 of the *Wholesale Code*, those Conditions of Licence do not include prohibitions against:

- terms that prohibit the offering of programming services on a build-your-own-package or small package basis;
- provisions that unilaterally grandfather distribution on the same terms and conditions as the previously negotiated agreement;
- veto rights by programming undertakings of BDU packaging changes.

[2] Broadcasting Decision CRTC 2017-144, Appendix 2.

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18. As additional examples, those Conditions of Licence do not contain any prohibition against a programmer requirement for minimum subscription levels (*Code* s. 4(g)) or require that commercially reasonable rates should take a service's viewership into account (*Code* s. 6(e)) .

19. That is, the Conditions of Licence that apply to Bell's discretionary services offer a more limited set of practical remedies to independent BDUs than does the *Wholesale Code*, a code that was designed largely in response to the Commission's finding, as a matter of fact, of a need to protect independent players from the potential for anti-competitive abuses by the dominant VI companies.

20. Given their relative lack of power, such provisions of the *Wholesale Code* are extremely important protections for smaller, independent BDUs. CCSA's recent experience, for example, has shown that prohibition of any programmer power to veto packaging changes can be critically important to independent BDUs.

21. As Cogeco has pointed out, a Court decision on Bell's appeal of the Commission's jurisdiction to implement the *Wholesale Code* remains pending. That appeal poses a risk that the *Wholesale Code* will be rendered ineffective, a fact that the Commission recognized by establishing suspensive Conditions of Licence in its 2017-144 decision.

22. For those reasons, CCSA considers that the Commission should go farther than Cogeco's recommendation to impose the 2017-144 Conditions of Licence on Historia and Series+. Rather, those services – and, for that matter, all Bell discretionary services – should be subject to all of the provisions of the *Wholesale Code* by way of Conditions of Licence, suspensive or otherwise.

23. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,

C.J. Edwards

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