

August 9, 2012

VIA ACCESS KEY

Mr. John Traversy
CRTC
1 Promenade du Portage
Les Terrasses de la Chaudière
Central Building
Gatineau, QC
K1A 0N2

Dear Mr. Traversy:

Subject: Broadcasting Notice of Consultation CRTC 2012-370- Application by BCE Inc. on behalf of Astral Media Inc. for authority to acquire effective control of Astral's broadcasting undertakings.

1. The Canadian Cable Systems Alliance ("CCSA") represents small and independent distributors across Canada. CCSA speaks on regulatory matters for over 100 companies operating in all Canadian jurisdictions except New Brunswick and Prince Edward Island.
2. CCSA strongly opposes the acquisition by BCE Inc. ("Bell") of the specialty, pay and pay-per-view services currently owned by Astral Media Inc. The Commission should not approve the proposed transaction.
3. CCSA requests the opportunity to appear at the oral public hearing of this matter, scheduled to begin on September 10th, 2012.
4. Pursuant to ss. 31(1) and 31(2) of the *CRTC Rules of Procedure*, CCSA hereby designates certain information in this submission as confidential.
5. Specifically, CIDG requests confidential treatment of:
 - a. Portions of the text in paragraphs 14-18 and paragraphs 24-32 of this submission;

- b. Appendix A to this submission in its entirety; and
 - c. Appendix B to this submission in its entirety.
6. The items listed above contain express references to wholesale fee rates, penetration thresholds, dollar amounts and contractual terms and conditions and to exchanges between parties in the context of private commercial negotiations.
7. CCSA designates such information as confidential because that information meets the following criteria set out as s. 39 of the *Telecommunications Act* in that such information is:
- a. financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or
 - b. information the disclosure of which could reasonably be expected
 - i. to result in material financial loss or gain to any person,
 - ii. to prejudice the competitive position of any person, or
 - iii. to affect contractual or other negotiations of any person.
8. Pursuant to s. 32(1) of the *CRTC Rules of Procedure*, CCSA submits that placement of such information on the public record would result in disclosure of:
- a. highly specific financial information relating to individual CCSA members that is consistently treated as confidential information and is subject to express contractual confidentiality obligations;
 - b. highly specific commercial terms and conditions that are consistently treated as confidential information and are subject to express contractual confidentiality obligations; and
 - c. highly specific competitive information, public disclosure of which could place the businesses of CCSA members in immediate jeopardy and have negative repercussions on the negotiations entered into by CCSA on behalf of those companies.

9. CCSA submits, further, that those potential harms outweigh the benefit to the public interest of disclosure of information that the public normally would not see and that relates to the specific businesses and concerns of independent BDUs that serve only a small portion of the Canadian television retail distribution market, which is a competitive market.

10. Pursuant to s. 32(2) of the CRTC *Rules of Procedure*, CCSA is submitting both confidential and abridged versions of the documents that contain information it has designated as confidential. CCSA requests that, if the Commission determines that any of such information must be disclosed on the public record or to any other party to this proceeding, CCSA be permitted to withdraw or amend the documents in question, as appropriate.

Sincerely,



Christopher J. Edwards
Vice-President, Corporate & Regulatory Affairs

CANADIAN CABLE SYSTEMS ALLIANCE INC.

COMMENTS IN RESPONSE TO:

**BROADCASTING NOTICE OF CONSULTATION
CRTC 2012-370**

**APPLICATION BY BCE INC. ON BEHALF OF
ASTRAL MEDIA INC. FOR AUTHORITY TO
ACQUIRE EFFECTIVE CONTROL OF ASTRAL'S
BROADCASTING UNDERTAKINGS**

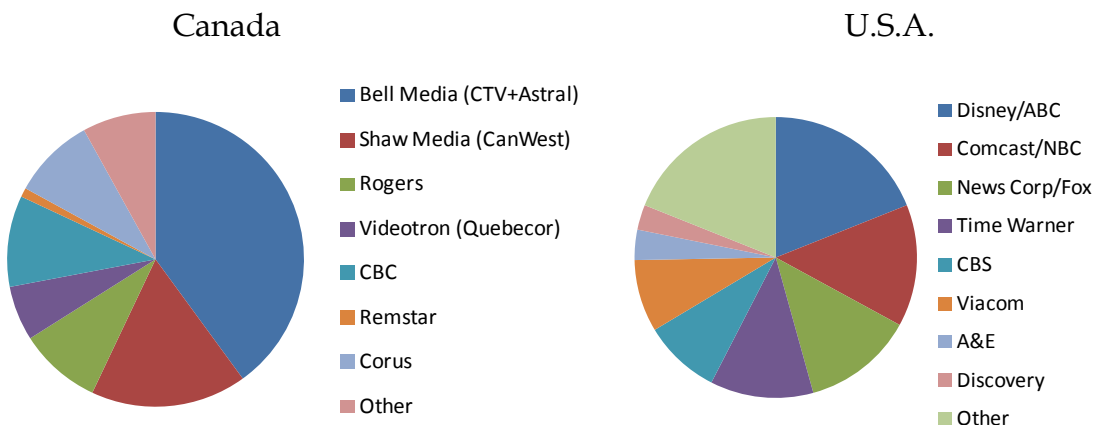
AUGUST 9, 2012

ABRIDGED

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Bell Already Has Market Dominance

4. There can be no doubt that Bell already occupies a dominant position in the industry. Approval of the proposed transaction would further entrench that dominance and exacerbate the negative impacts of that dominance on competing BDUs and the consumers they serve.
5. The following charts illustrate the dominance that Bell’s 40% share of total television programming revenues would represent, as compared to the U.S. market¹:



¹ Sources: Canada, CRTC 2011 Communications Monitoring Report, Figure 4.1.3; U.S.A., Dr. Roger Ware, “Report on the Economic Effects of Vertical Integration in the Canadian Broadcasting Industry,” filed in Appendix C to Cogeco Cable Inc.’s comments in response to BNC 2010-783, April 27, 2011, Table 6.

6. That dominance is particularly evident with respect to the sale and distribution of those services – Pay, Specialty and Pay-Per-View – for which BDUs pay wholesale fees and Canadian consumers pay subscription fees.
7. Based on the CRTC Pay, Pay-Per-View and Specialty Services, Statistical and Financial Summaries, 2007-2011, the revenue shares of the combined Bell/ Astral entity for Specialty and Pay services (rounded) would be:
 - English Specialty/Pay Revenue: 39%
 - French Specialty/Pay Revenue: 72%.
8. The Pay, Specialty and Pay-Per-View services are the ones for which BDUs must negotiate wholesale affiliation agreements and the ones for which, because they require payment of wholesale fees, end up representing increases on the monthly bills of BDU subscribers.
9. Those services include a number of legacy analog services that, due in part to CRTC support over the past few decades, have come to occupy the position of non-replicable, “marquee” programming services with very broad subscribership.
10. That is, they are services which, as a practical matter, no BDU can do without. A failure to offer some or all of those services will cost a competing BDU large numbers of existing customers.
11. Based on the CRTC’s 2011 Communications Monitoring Report, Bell’s 2011 Annual Report and Astral’s 2011 Annual Report, the percentages of such marquee services owned and operated by the combined Bell/ Astral entity would be:
 - English Category A Services: 43%
 - French Category A Services: 71%
 - Sports Specialty Services: 44%.
12. That is an overwhelming concentration of marquee programming, including premium sports services, in the hands of one, dominant media enterprise; an enterprise that competes directly and aggressively with much smaller CCSA companies for BDU customers.

Bell is Already Abusing Its Market Dominance

13. Despite Bell’s repeated assertions that “the market has spoken” in accepting its new wholesale contract for the distribution of the former CTV Specialty services, nothing could be farther from the truth. The fact is that Bell, by virtue of its dominant market power, succeeded in imposing new terms on competing distributors.
14. Those new terms represent a sea-change in the industry. They include [#####].
15. Bell Media’s newly introduced [#####] offered in the industry.
16. In effect, Bell has managed to “contract out” of [#####] so as to enable the promise of consumer choice in the digital environment.
17. For example, [#####]. The only way for the BDU to avoid that result is to [#####].
18. In other words, Bell’s contract [#####] that the Commission dispensed with in Regulatory Policy CRTC 2008-100.
19. CCSA members are currently working out the impacts to their businesses that result from the contract for 29 Bell Media Specialty services to which they are now bound as a result of the CRTC Final Offer Arbitration.
20. Those impacts are severe and, not surprisingly, it is the smaller companies that have the least ability to work within the pricing and packaging restrictions that result from that contract.

- 21. Attached at **Appendix A** are specific examples of how those pricing and packaging terms impact the ability of CCSA members to deliver programming services to their customers. As the examples show, the results can be severe and, at times, nonsensical.
- 22. To be sure, they have nothing to do with improving the affordability and flexibility of program service offerings to Canadian consumers.

We Expect More Of The Same

- 23. That contractual precedent has now been set for the English Canadian market. The proposed transaction, if approved, would give Bell the ability to carry that precedent into the Quebec Francophone market and apply it, as well, to marquee pay services such as TMN and HBO Canada.
- 24. [#####

#####].
- 25. [#####

#####].
- 26. CCSA is concerned that, if the proposed transaction is approved, [#####

#####].
- 27. [#####

#####].
- 28. [#####

#####].

- 29. [#####

#####].
- 30. [#####] and, as a result, severely constrains the ability of CCSA members to migrate services – not only Bell’s but, also, those of other programmers – to digital distribution and to offer programming services in digital theme packages.
- 31. [#####

#####].
- 32. [#####

#####].
- 33. Such a prohibition would prevent CCSA members from moving forward with plans to migrate packages and services to digital so as to enable them to recover system capacity they desperately need for the introduction of competitive digital offerings. It would also significantly impair them from rationalizing channel line-ups among their systems.
- 34. It will be in Bell’s interest to delay such a negotiation. To the extent Bell can make it difficult for CCSA members to offer attractive, competitive digital offerings or to launch marquee services on their systems as they recover capacity, Bell, as a national BDU, stands to gain the customers that CCSA members will inevitably lose.
- 35. CCSA’s experience tells it that Bell will do everything it can to make that happen.
- 36. Bell Media should not be permitted to acquire additional television assets given the very dominant position it already occupies in the Canadian broadcasting

system and the clear evidence that already exists as to its willingness to abuse that dominance.

Impacts on the Broadcasting System As A Whole Must Be Considered

37. In paragraphs 35-47 of its Supplementary Brief, Bell argues that, based on BBM measurements of national audience share, the proposed transaction does not trigger the review thresholds set out in Broadcasting Public Notice CRTC 2008-4, "Regulatory policy: Diversity of voices:."
38. CCSA notes that BPN 2008-4 was concerned with the matter, proceeding from the objective set out at s. 3(1)(b) of the *Broadcasting Act*, of ensuring that a diversity of voices, particularly editorial voices, from a plurality of sources, was maintained within the Canadian broadcasting system for the benefit of Canadian viewers.
39. That is, BPN 2008-4 did not focus on other, equally important, objectives under the *Act* such as the objectives, under s. 3(1)(t), that distribution undertakings:
 - (ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,
 - (iii) 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.
40. Bell's argument completely ignores other statements of the Commission in BPN 2008-4, notably that:

It is the Commission's view that its policies should continue to foster a competitive environment for distribution undertakings, and that it should discourage any concentration of ownership that would result in a substantial reduction of effective competition in local markets. (paragraph 101);

and that:

In a rapidly changing broadcasting environment, the Commission's focus should be on ensuring effective competition for BDU services in local markets. The Commission is of the view that such competition will result in increased programming diversity for Canadians. (paragraph 103).

41. The Commission concluded, among other things, that:

The Commission, as a general rule, will not approve applications for a change in the effective control of broadcasting distribution undertakings (BDUs) in a market that would result in one person being in a position to effectively control the delivery of programming services in that market. The Commission is not prepared to allow one person to control all BDUs in any given market (paragraph 105).

42. The Commission must remind itself that acquisition of other BDUs is not the only way in which a dominant integrated enterprise can “reduce effective competition in local markets”. Substantial control over availability and pricing of content – especially non-replicable content – is a highly effective mechanism for reducing BDU competition in a market.

43. For that very reason, in BPN 2008-4, paragraph 106, the Commission set out the following analytical framework for evaluation of the effects of a proposed transaction on the competitiveness of broadcasting distribution services:

In analyzing any such transaction, the Commission will be primarily concerned with preserving the diversity of programming voices in a market. It will give due consideration to factors such as:

- the regulatory framework for BDUs;
- the market share of other BDU services;
- the impact of unregulated distribution services;
- **the extent to which a transaction could change the respective negotiating power of the BDU(s) and programming service providers;**
- **the impact on community channels or community programming undertakings;**

- the size of the market; and
- the majority language of the market.

[emphasis in original].

44. The proposed transaction is not simply an acquisition of one person's programming assets by another programming undertaking. Rather, this transaction must be assessed in the context of the massive consolidation and, especially, vertical integration that is taking place within the industry.
45. The proposed transaction, following as it does upon the Bell CTV merger, represents a profound change in the balance of negotiating power between small BDUs and the dominant media behemoth that Bell has already become.
46. As CCSA has already seen, that profound change in the balance of power is making it increasingly difficult - and in some cases impossible - for small BDUs to satisfy the regulatory objectives, at s. 3(1)(t) of the *Act*, to provide "efficient delivery of programming at affordable rates".
47. In addition, the proposed transaction, combined with Bell's prior acquisition of CTV Globemedia, will have a profound negative impact on "effective competition for BDU services in local markets", most especially in the small rural and remote markets that CCSA members serve.
48. It has already become evident that a number of CCSA's smaller BDU members will no longer be able to sustain their video distribution businesses in the face of the price increases and new packaging restrictions that Bell is imposing on them today.
49. Approval of the proposed transaction can only exacerbate that situation and threaten even more small BDUs, especially those in rural Quebec.
50. To the extent that such small companies cannot continue to compete and offer video services, there will be a corresponding impact on the community channels many of those companies offer. That will directly harm diversity.

51. Similarly, to the extent that the smaller BDUs are driven out of the field, Canadian consumers will lose access to High-Speed Internet and competitive telephone services.

Conclusion

52. It is not enough for this proposed transaction to pass the test set out at paragraph 87 of BPN 2008-4, the only test against which Bell measures the transaction.
53. Indeed, diversity of voices alone is not the only concern in this matter. The Commission's review of this proposed transaction must account for its potential economic and other impacts to Canadian consumers, to industry stakeholders and to the health of the broadcasting system, as a whole.
54. Bell is already dominant in the Canadian broadcasting sector and, indeed, in all sectors of the communications industry. Bell's actions already have made it clear that Bell is willing to abuse that position of dominance to drive competition from the field.
55. The effects of Bell's behaviour are especially damaging to small, competing BDUs.
56. Approval of the proposed transaction would further entrench Bell's dominance to the detriment of small BDUs throughout rural Canada and, especially, rural Quebec.
57. The profound imbalance of negotiating power that would result would almost certainly produce serious negative impacts on the commercial viability of small, rural BDUs and on their ability to deliver community channel programming, High Speed Internet and competitive telephone services to their communities.
58. For those reasons, the Commission should deny Bell's application for approval of the proposed transaction.

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