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September 21, 2012

Mr. John Traversy
Secretary General
Canadian Radio-television
and Telecommunications Commission (CRTC)
Ottawa, Ontario
K1A ON2

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation 2012-370-2 – Application by BCE Inc. (BCE), on behalf of Astral Media inc. (Astral) for authority to change the effective control of Astral’s broadcasting undertakings (Items 1 through 4) – Final Comments of Cogeco Cable Inc. (“Cogeco”)

Please find attached Cogeco’s final comments in the matter of the above-noted applications.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Yves Mayrand", is written over a light blue horizontal line.

Yves Mayrand
Vice President, Corporate Affairs

cc. BCE Inc. (bell.regulatory@bell.ca)
Bell Media Inc. (david.spodek@bellmedia.ca)

Attachment

The Burden of Proof

1. At the opening of the oral phase of the proceeding, the Chairman set out the parameters of the review as follows:

“We take very seriously our mandate to review this transaction to ensure that it is in the public interest. I would remind everyone that it is the responsibility of the seller or their representative to prove that a transaction is indeed in the public interest. In this case, that means the burden of proof rests squarely with Astral and BCE. Monsieur Cope, c’est vous et votre équipe qui ont le fardeau de la preuve. Ceci n’est pas une séance de négociation”¹ (our emphasis)

2. **Cogeco reiterates that BCE and Astral have clearly not fulfilled their burden of proof. BCE and Astral had the obligation to put before the Commission, on a timely basis, their best possible proposal, to meet all tangible benefit policy requirements and to satisfy the public interest test. It is not the responsibility of the Commission to negotiate amendments to the application filed by the applicant in order to remedy its shortcomings, or to revise or reallocate tangible benefits at or following the public hearing in order to bring them into compliance.** Conversely, interveners do not have the burden to prove that the application is not compliant or that it is not in the public interest, and they should not have to face the disadvantage of dealing in an adversarial process with last minute amendments or proposals filed by the applicant.² **When an applicant fails to discharge its burden of proof and meet the public interest test, the Commission must deny the application. Such was the case in a previous application for transfer of ownership involving Power Corporation and TVA (formerly Télé-Métropole), which is particularly relevant in the circumstances:**

“Although the Commission does not question the ability and willingness of Power Corporation to fulfil all the commitments made by Télé-Métropole at its last licence renewal and to maintain the present high level of performance, it considers that the Applicant has not demonstrated to the Commission's satisfaction that many of the specific benefits it proposes are not either already offered or planned by Télé-Métropole or that they could not be offered by it. Moreover, none of the other proposed benefits were sufficiently concrete or detailed to permit examination and assessment by the Commission. Having carefully examined the applications as submitted and the statements made at the public hearing, the Commission has concluded that the Applicant has not demonstrated to the Commission's satisfaction that the proposed transfer of control would yield significant and unequivocal benefits to the communities

¹ CRTC Hearing Transcript Volume 1, September 10, 2012, at lines 8-10.

² CRTC Hearing Transcript Volume 1, September 10, 2012, at line 217.

served or to the broadcasting system as a whole and that it is in the public interest. Accordingly, the Commission denies the Application.”³

3. The failure by BCE and Astral to meet the burden of proof is demonstrated by the applicant’s actions in this proceeding. The applicant deliberately chose to introduce fundamental last minute changes to its application on September 10, 2012 as part of its opening presentation at the oral phase of the proceeding. These changes were made after its application was filed with the Commission on May 1, 2012, after the Commission’s review and questioning of that application throughout May and June 2012, after interested parties filed their comments on August 9, 2012 and after BCE filed its reply comments on August 20, 2012. BCE’s actions in this regard are wholly inconsistent with the requirement to present the best possible proposal before the Commission and interested parties. **Such an abuse of the process by any applicant is unacceptable, but more so from an applicant that has access to all the necessary expertise and resources, including external experts, to comply fully with the Commission’s procedures and requirements.**
4. The first revision was the addition of \$413 million to the transaction valuation, representing the value of the television broadcasting services that Astral jointly owns in a 50% partnership with other licensed Canadian broadcasting undertakings. At the time BCE’s application was made public in BNC 2012-370, BCE had not included these assets in the transaction valuation, and had rejected the clear precedents for including them as noted in detailed questions from the Commission during the deficiency phase. BCE maintained its position in its written reply, notwithstanding further opposition and supporting evidence submitted by numerous parties representing all aspects of the broadcasting system and the public interest, encompassing consumer groups, broadcasters, producers and distributors. However, upon arriving at the hearing, BCE reversed course.
5. The revision to the transaction valuation by \$413 million triggered further revisions to the package of proposed benefits, also unveiled at the beginning of the oral phase of the proceeding. Among the newly announced benefits was a proposal to launch a new Category C French-language news service. Had such a proposal been properly included in the application when it was filed, it could have been reviewed and questioned by the Commission as part of its normal procedures to complete the record of the application prior to making it public with the release of BNC 2012-370. Interested parties would have had the opportunity to review and comment on such a proposal, including CBC which had not intervened on the application as it was originally filed.⁴ Instead, the

³ Broadcasting Decision 86-367, as read into the CRTC Hearing Transcript, Volume 3, September 12, 2012, at line 5647.

⁴ CBC letter to the Commission, September 14, 2012 stated that CBC is opposed to the proposed service and objects to the manner in which the proposal was placed before the Commission.

Commission was left with the task of “unpacking” this proposal over the course of the oral phase of the proceeding, while interested parties were left without a full and timely understanding of its true nature, extent and relevance. **The Commission can expect a number of fairness issues to be raised. Among them is the practical issue that approving this proposal as part of a benefits package would fetter the Commission’s discretion to consider it as part of a fulsome separate process on whether to grant a licence to this or any other new Category C news service following a subsequent competitive application process.**

6. The lack of clarity and transparency surrounding BCE’s last minute revisions to its benefits package was further demonstrated with the proposal to launch a Canadian alternative to Netflix in the form of a “multi-platform On Demand” service. Only through the questions from Commission legal counsel in the final moments of the oral phase of the proceeding was it revealed that this proposal was not part of the tangible benefits but should be viewed instead as an intangible benefit.⁵ **The confusion underscores the challenges of assessing an application that is essentially a moving target.**
7. BCE claimed that the “multi-platform On Demand” service could only be launched if the proposed acquisition is approved as filed.⁶ It was also argued that such a service is necessary to respond to the threat of international over-the-top (OTT) competitors.⁷ BCE further argued that the initiative is so important that, in its absence, management would not be able to achieve its business model projections.⁸ Yet, BCE also took the position that the introduction of the service would not change the valuation of Astral for purposes of the transaction.⁹ **The threat of OTT is contradicted by the Commission’s own conclusions in its letter of April 16, 2012 that OTT programming services have not had a significant impact; a conclusion that is supported by the fact that the hours of viewing content on Netflix by Canadians amounts to only 1.5% of total viewing.**¹⁰
8. None of BCE’s representations resolve the issue of whether such an initiative represents a truly incremental benefit that is entirely dependent on BCE’s proposed acquisition of Astral. Rather, if launching a multi-platform service is of such importance to the core business of distributors, then surely BCE and other distributors would pursue such an initiative regardless. Indeed, Shaw has announced the launch of such a service on its own.¹¹ Moreover, there is considerable doubt that BCE’s ownership of Astral’s services represents the only means by which BCE could provide such a service, given Astral’s

⁵ CRTC Hearing Transcript, Volume 5, September 14, 2012, at lines 9603-9604.

⁶ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 426.

⁷ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9427.

⁸ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9608.

⁹ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9598.

¹⁰ CRTC Hearing Transcript, Volume 3, September 12, 2012, at lines 4512 and 5349.

¹¹ Shaw press release, September 20, 2012.

track record of making linear and nonlinear rights for its content available to distributors. It is highly likely that Astral would have proceeded with such a service regardless of the transaction, as Mr. Ian Greenberg indicated that such a service is core to Astral's business and was already under development within the company.¹²

9. The revisions that BCE sought to introduce to its benefits package would not remedy its shortcomings in fulfilling the public interest. **BCE's revised schedule of proposed benefits for on-screen initiatives still falls well short of the 85% of total television benefits that has been the Commission's standard requirement.** The list of benefits filed as Schedule B to BCE's undertaking dated September 11, 2012, indicates that on-screen initiatives would account for 72% of the total benefits for television, including the funding for the contentious proposal for the Category C French news service, as well as the funding for film festivals that several parties noted should be considered a social benefit instead.
10. On the final day of the oral phase of the proceeding, BCE offered up the possibility that the \$40 million proposed for its "Digital Future" proposal that would fund the telecommunications network infrastructure of its subsidiary, Northwestel, could be redirected to on-screen benefits.¹³ While such a revision could bring the total on-screen benefits closer to the 85% threshold, BCE did not provide any concrete or detailed proposal for these funds if they were to be redirected to support on-screen initiatives. The Commission would not have the information required to examine and assess the benefits that would accrue from what would become a pool of \$105 million of undefined on-screen initiatives, equivalent to 58% of the total television benefits proposed.¹⁴
11. **The Commission must not approve an application that, at the conclusion of the oral hearing phase of the proceeding, remains so vague and fluid on the tangible benefits proposed by the applicant, and with such obvious fundamental flaws. This cannot be seen as discharging the applicant's burden of proof, as clearly understood by BCE given Mr. Bibic's following statement:**

*"If we had come forward and said we're going to just do great stuff, I don't think it would have been enough, with respect, Mr. Chairman, to meet that burden of proof."*¹⁵

¹² CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9610.

¹³ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9412.

¹⁴ BCE, response to undertaking, dated September 11, 2012, Schedule B indicates \$65 million in funding for "other PNI". This amount combined with the \$40 million redirected from the "Digital Future" proposal would create a pool of \$105 million. If the Commission also rejected the proposal for a Category C French news service, the pool of undefined funding for on-screen benefits would rise to \$125 million, or 69% of the total television benefits package.

¹⁵ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9616.

The Public Interest

12. The Commission must assess this application on its own merits and is not bound to assess it solely on past guidelines such as those set out in the Commission’s Diversity of Voices Policy.¹⁶ This point was raised first by the Chairman in his questioning of the BCE and Astral panel of witnesses.

“Juste pour être clair, je veux bien comprendre votre position. J’ai toujours cru que les politiques du Conseil, particulièrement celles sur l’intégration verticale, étaient adoptées en vertu de l’Article 6 de la Loi sur la radiodiffusion et donc, ce n’était que des politiques larges, que ça ne liait pas nécessairement la discrétion du Conseil.

C’était un peu le Conseil qui parlait à haute voix pour essayer de guider les intervenants du système, mais qu’en fait ça serait une erreur de juridiction de se lier à ces politiques.”¹⁷

13. Considerable attention was given to whether BCE combined with Astral would surpass the thresholds established in the Diversity of Voices Policy. The thresholds established in the Diversity of Voices Policy for television services sought to address concerns that common ownership of multiple television services must not prevent audiences from having “access to a diversity of programming – especially national, regional and local content.”¹⁸ It is consistent with the objectives of that Policy that the thresholds not take account of viewing to foreign programming. However, it is vital that the Commission’s review of this application also consider whether the market will be too concentrated and vertically integrated so as to allow BCE to effectively take advantage of its market power to the detriment of competition, independent content producers and Canadian consumers.
14. BCE repeatedly asserted at the hearing that, when combined with Astral, its share of viewership in the market for English-language television services would be 33%.¹⁹ This measure is based on including in the denominator viewing to non-Canadian services, thus inflating the total market size and lowering BCE’s relative share. **BCE also excluded from its combined viewership share all viewing to Astral’s jointly owned services. Yet, on the first day of the oral phase of the proceeding, BCE added the value of**

¹⁶ CRTC Broadcasting Public Notice 2008-4.

¹⁷ CRTC Hearing Transcript, Volume 1, September 10, 2012, at lines 204-205.

¹⁸ CRTC Broadcasting Public Notice 2008-4, paragraph 21. In BCE’s reply remarks, it stated that the Diversity of Voices Policy includes foreign programming, CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9417. There are only two references to foreign programming in the decision. One at paragraph 18 that states “Diversity of programming can mean several things, such as the expression of Canadian voices amidst foreign ones...” (emphasis added) and again at paragraph 158 in the context of new media platforms. However, neither of these references can reasonably be interpreted as contradicting the main objective of the policy as found at paragraph 21 and repeated at paragraph 25, item 3.

¹⁹ CRTC Hearing Transcript, Volume 1, September 10, 2012, at lines 102, 258, 1703, and CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9419.

Astral's jointly owned services to the calculation of the transaction's value. It is inconsistent to treat these assets as part of the transaction for valuation purposes but exclude them when considering viewership shares.

15. When the viewership shares attributable to the jointly owned services are included, BCE and Astral would have a total share of the English language television market in excess of the 35% threshold whether the denominator is based on viewing to Canadian services only or to both Canadian and non-Canadian services. However, the appropriate base against which to measure viewership shares for purposes of the Diversity of Voices Policy should include just Canadian services, consistent with the approach that the Commission has taken in measuring viewership shares in its Communications Monitoring Reports since that Policy was published.²⁰
16. The other measures of market shares discussed during the oral phase of the proceeding related to television and radio revenue shares. On the final day of that part of the process, BCE introduced a response to data filed by PIAC that was prepared by PIAC's expert witness, Dr. Dwayne Winseck.²¹ BCE's revisions to the data introduce two new twists on representing the market shares in terms of revenues. First, BCE added to the base of total television revenues \$839 million of funding for television and \$327 million in funding for radio that CBC received from Parliament in the 2011 broadcast year. These additions inflate the base of television and radio revenues by including a source of funding that is entirely beyond the reach of any private broadcaster. It is inappropriate to include these in the base. In doing so, BCE was able to present its combined share of television revenues as being only 32% when in fact it would be 36%; in the case of radio revenue shares, the combined share would similarly increase by upwards of 5 percentage points. **Second, BCE omitted all revenues from Astral's jointly-owned services when calculating the combined BCE-Astral share of television revenues. Again, it is inconsistent to treat these assets as part of the transaction for valuation purposes but exclude them when calculating revenue shares. The inclusion of the revenues from these services would bring the share of total television revenues to 37%.**
17. At the hearing, BCE also took issue with Cogeco's statement that the combined BCE-Astral would hold 45% of the share of radio listening, arguing that its audience and revenue share would be under 23%.²² Cogeco's reference to a 45% share of listening is based on data on the listening hours of the Canadian English-language private commercial radio operators, as indicated in the Commission's 2011 Communications Monitoring Report, Table 4.2.6, using PPM data. The equivalent data for 2011 was released in the 2012 Communications Monitoring Report one week before the start of the

²⁰ CRTC Communications Monitoring Reports 2009 through 2012, Tables 4.3.9 or 4.3.10.

²¹ BCE filing appended to its reply remarks, September 14, 2012.

²² CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9422.

oral phase of the proceeding. **The more recent Report indicates that the combined BCE-Astral share of radio listening would be 44% among English-language private commercial radio operators and 41% when aggregated across both English and French-language private commercial radio operators.**²³ These shares exclude CBC/SRC, which is appropriate since the latter does not compete for advertising revenues with the private commercial radio operators.

18. BCE disputed that it would exercise market power or have any incentive to withhold its broadcasting services to advantage its own distribution services to the detriment of competitors.²⁴ As the numerous market share figures filed by Cogeco and others indicate, as well as the corrections to BCE's revised shares noted above, BCE combined with Astral would have increased market power in the supply of television programming content. **The extent of this increased market power, combined with BCE's significant presence in the multi-platform distribution market, would provide BCE with the incentive and opportunity to abuse its market power precisely by withholding the supply of BCE and Astral services to competing distributors on one or more platforms.**
19. The economic rationale for engaging in such anticompetitive behaviour was explained by Dr. Roger Ware, who noted that a dominant vertically integrated player would seek to leverage its control over the supply of inputs to competitors with which it competes in the retail market.²⁵ The business rationale was explained by Michael MacMillan, who noted that if he were in the shoes of vertically integrated companies such as BCE, it would be entirely rational from a business perspective to protect the sunk costs in the cellular, home phone, and television distribution lines of business by withholding broadcasting content.²⁶ These independent observations are backed up by the extensive practical evidence in the form of BCE's own track record of denying television programming content to distributors.
20. BCE claimed that it had not denied any service to any distributor, either linear or nonlinear.²⁷ Cogeco and other distributors have filed ample evidence that this claim is false.²⁸ Bell Media refused to provide Cogeco with access to RDS2, Discovery HD, and Space HD services, even though Bell Media had launched these services on its own

²³ CRTC 2012 Communications Monitoring Report, Table 4.2.5.

²⁴ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 512, CRTC Hearing Transcript, Volume 5, September 14, 2012, at lines 9439-9440.

²⁵ CRTC Hearing Transcript, Volume 3, September 12, 2012, at lines 5456-5471.

²⁶ CRTC Hearing Transcript, Volume 5, September 14, 2012, at lines 9011-9014.

²⁷ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 566, and CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9438..

²⁸ Cogeco's intervention, August 9, 2012, Appendix 6. CRTC Hearing Transcript, Volume 2, at lines 3447, 3451, 3555-3559; Volume 3, at lines 4598-4606, 4675, 4728-4730, 4797-4798, 5313, 5487-5488, Volume 4, at lines 6398-6399, 6405, 6610-6616, Volume 5, at lines 8348, 8362-8365, 8558-8559, 8759-8768, and 8797-8799.

distribution platforms. Bell Media also refused to negotiate non-linear rights for content on Bell Media services even while content from those services was being made available on its own branded websites.

21. BCE stated in its reply remarks that Bell Media provided to Rogers, Shaw and its own affiliated distributor, Bell TV “all of CTV’s over-the-air content for set-top-box VOD”.²⁹ **This short list of vertically integrated distributors provided with access to this content underscores Cogeco’s evidence that Bell Media refused to provide Cogeco with this content.** Not only does this contradict BCE’s claim that it “never denied” non-linear content to any distributor, it is contrary to the safeguards that the Commission established in its Vertical Integration Framework. And it contradicts BCE’s argument that there is no legitimacy to the parties’ evidence that it “ever violated any of the Codes of Conduct or provided any behaviour in the marketplace that was inconsistent with both the spirit of vertical integration and the letter of it.”³⁰
22. Another highly misleading and inaccurate claim made by by BCE at the hearing was its statement that the pricing model contained within the affiliation agreement between Cogeco and Astral is “exactly the same principle and the same model that Bell Media put forward in the arbitration”.³¹ Cogeco filed evidence in confidence in Appendix 5 of its intervention filed August 9, 2012 that states the exact opposite. For the public record, Cogeco is filing in the Appendix to these comments a point by point comparison that demonstrates the terms in the two sets of agreements are far from “mirror” images. **Not only has BCE sought to mislead the Commission on the nature of the two sets of agreements, it appears that BCE has breached the confidentiality provisions in the affiliation agreement that was signed between Cogeco and Astral. Astral argued that it remains independent of BCE and that BCE has not imposed any conditions on it.**³² Yet, BCE was able to obtain from Astral details of a confidential agreement entered into with Cogeco. **Cogeco is the only company that is a party to both sets of agreements and Cogeco should have been the only party in a position to make the comparison.**
23. The Commission acknowledged in establishing its Vertical Integration Framework that vertically integrated companies have both the opportunity and incentive to engage in anticompetitive behaviour through the withholding of television programming content that they control in order to gain an advantage in their affiliated distribution operations.³³ As Cogeco and others have demonstrated, the Vertical Integration Framework has not

²⁹ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9459.

³⁰ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 497.

³¹ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 548.

³² CRTC Hearing Transcript, Volume 5, September 14, 2012, at lines 9481-9482.

³³ CRTC Broadcasting Regulatory Policy 2011-601, paragraphs 19 and 20, as read into the record in CRTC Hearing Transcript, Volume 3, September 12, 2012, at lines 5411-5413.

prevented BCE from exercising its market power and it would continue to be challenged should BCE's proposed acquisition of Astral be approved. **That it will be challenged is underscored by Mr. George Cope's statement that, in his view, the Vertical Integration Framework "rules go too far".**³⁴

24. The Commission explored the possibility of subjecting BCE to new measures that would supplement those in the Vertical Integration Framework, or other safeguards, perhaps in an effort to alleviate the concerns expressed by consumers, distributors, other broadcasters and producers regarding the concentration of market power in a combined BCE-Astral. Among the measures discussed were:
- a. including the existing Code of Conduct in the Vertical Integration Framework as a condition of licence;³⁵
 - b. specifying additional conditions in the Code of Conduct;³⁶
 - c. imposing wholesale rate regulation of specialty and pay services;³⁷ and
 - d. imposing structural separation.³⁸
25. BCE was adamantly opposed to all of these proposed measures, except for the first one which BCE reluctantly conceded only during the reply phase of the oral hearing.³⁹ Yet, this was the one revision that when first explored by the Commission, BCE questioned whether doing so "would get anyone any further."⁴⁰ It is apparent that, in BCE's opinion, this "concession" would have little impact on how it actually conducts its vertically integrated business.
26. In all other cases, BCE rejected the measures as unworkable or unacceptable and said they would have resulted in BCE not pursuing its proposed acquisition of Astral.⁴¹ BCE's rejection of wholesale rate regulation for its specialty and pay services was most vigorous. BCE's arguments against this measure included that it would be impossible for the Commission to regulate all of its input costs for the services and therefore it should not regulate BCE's wholesale rates.⁴² Yet, the Commission has regulated the wholesale rates of specialty services in the past, and continues to do so with respect to wholesale

³⁴ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 510.

³⁵ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 498.

³⁶ CRTC Hearing Transcript, Volume 1, September 10, 2012, at line 473.

³⁷ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9521.

³⁸ CRTC Hearing Transcript, Volume 1, September 10, 2012, at lines 427-428.

³⁹ CRTC Hearing Transcript, Volume 5, September 14, 2012, at line 9406.

⁴⁰ CRTC Hearing Transcript, Volume 1, September 10, 2012, at lines 499-504.

⁴¹ CRTC Hearing Transcript, Volume 1, September 10, 2012, at lines 474-477; 511; CRTC Hearing Transcript, Volume 5, September 14, 2012, at lines 9524-9533; and CRTC Hearing Transcript, Volume 1, September 10, 2012, at lines 429-432.

⁴² CRTC Hearing Transcript, Volume 5, September 14, 2012, at lines 9530.

telecommunications services. In neither case, has the Commission had regulatory oversight over all of the input costs for such services.

27. Moreover, the concept of regulating wholesale rates for television programming content is not a concept limited to the Canadian market. A review of the subscription television market by Ofcom concluded the following in regards to wholesale rate regulation: “This type of remedy has been implemented and been effective elsewhere in the world.”⁴³
28. The CRTC’s tangible benefits policy states that “the Commission does not generally accept as a benefit any proposed initiative that is dependent upon approval of a separate application yet to be considered by the Commission”.⁴⁴ It would be inconsistent with this policy for the Commission to approve the proposed transaction if that approval is dependent upon implementing additional regulatory conditions as part of a future process. Thus, even if the Commission considered that BCE’s proposed acquisition of Astral could be approved subject to the application of additional regulatory conditions, such as an expansion of the terms in the Code of Conduct, wholesale rate regulation or structural separation, (and Cogeco does not believe this to be the case), these conditions are not in place now and could not be relied upon to mitigate the detrimental impact of approving the proposed acquisition.
29. **Cogeco submits that the Commission must reject BCE’s proposed acquisition of Astral as the only decision that would be in the public interest. No meaningful regulatory remedy advanced by the Commission could be imposed, nor would BCE accept such remedies.**

Conclusion

30. **BCE’s application to acquire Astral is deeply flawed and is not in the public interest. The flaws in the application and the negative repercussions of approving it cannot be remedied, as has been demonstrated in Cogeco’s submissions. BCE has deliberately abused the Commission’s process and should not be rewarded for doing so. Accordingly, Cogeco reiterates that the BCE Applications listed in BNC 2012-370 must simply be denied by the Commission.**

⁴³ Ofcom, Pay TV statement, as cited by the report prepared by Arnold-Porter for TELUS, comments, August 9, 2012, filed as Appendix 3.

⁴⁴ CRTC Broadcasting Public Notice 1989-109.

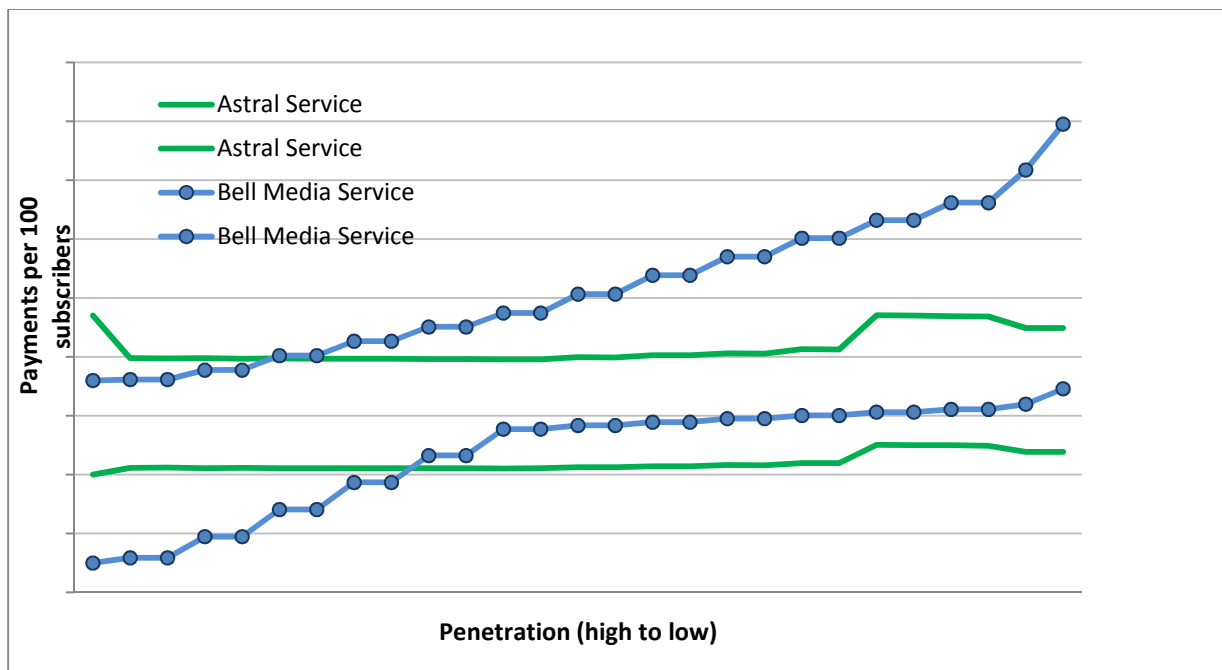
**Comparison of Bell Media and Astral Media Contracts with Cogeco
General Contract Terms**

	Bell Media	Astral Media
Term of Contract	5 years	5 years
Rate increases over contract term	Double digit increases	Single digit increases
Retroactivity	Yes	No

Penetration Based Rate Card Terms

	Bell Media	Astral Media
High Penetration (70% to 100%)	Payments increase in direct proportion to penetration decrease	Revenue neutral (payments remain flat)
Medium Penetration (50% to 70%)	Payments increase - exponentially in some cases - relative to penetration decrease	Revenue neutral (payments remain flat)
Low Penetration (less than 50%)	Payments increase exponentially to minimum penetration permitted	One rate step increase (slight increase in payments)
Minimum Penetration	Yes	None

Cogeco's Payments to Bell Media and Astral Media Example of Two Services
(illustration based on 100 subscribers)



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