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Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: Broadcasting Notice of Consultation CRTC 2016-225
Renewal of television licences held by large English- and French-language ownership groups, Bell Media Inc. Application numbers 2016-0020-6 and 2016-0012-2, Corus Entertainment Inc. Application numbers 2016-0022-1 and 2016-0015-6, Rogers Media Inc. Application number 2016-0009-9

Dear Ms. May-Cuconato,

- 1 In accordance with the procedures set out in BNC 2016-225, as modified by BNC CRTC 2016-225-1, CBC/Radio-Canada submits the following intervention opposing Bell Media Inc. (Bell Media), Corus Entertainment Inc. (Corus) and Rogers Media Inc.'s (Rogers) request to eliminate all of the safeguards from their conditions of licence that are similar to provisions contained in the Wholesale Code.
- 2 Bell Media's television programming undertakings are currently subject to a number of safeguards against anti-competitive behaviour by condition of licence. The Commission's approval of BCE's acquisition of Astral Media Inc. in Broadcasting Decision 2013-310 was conditional on their inclusion as conditions of licence for all of their programming and television distribution services. As the Commission noted in paragraph 28 of the Astral decision, "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."
- 3 The Commission has also imposed similar safeguards as conditions of licence on other vertically-integrated Canadian entities, including Corus and Rogers.
- 4 The Commission subsequently adopted the Wholesale Code (the Code) through three related decisions:

- 5 First, the Code is set out in the Appendix to Broadcasting Regulatory Policy CRTC 2015-438. It establishes provisions that govern the commercial arrangements between broadcasting undertakings. The Code is expected to, among other things, prevent abuse of dominant positions by vertically integrated entities, thereby facilitating a diversity of voices in the Canadian broadcasting system.
- 6 Second, Broadcasting Order 2015-439, which came into effect January 22, 2016, makes the Code applicable to all licensed BDUs, requiring them under section 9(1)(h) of the Broadcasting Act to abide by the Code in their dealings with any programming undertaking. It also provides that licensed BDUs can only distribute a licensed programming undertaking if their affiliation agreement contains a clause requiring the programming undertaking to comply with the Code or if the programming undertaking is subject to a condition of licence requiring it to abide by the Code.
- 7 The Commission has indicated in Broadcasting Regulatory Policy CRTC 2015-438 that it intends to impose the Code on all licensed BDUs and programming undertakings over time by means of conditions of licence such that, eventually the 9(1)(h) order will be repealed.
- 8 Finally, Broadcasting Information Bulletin CRTC 2015-440 provides non-binding, interpretive guidelines that are meant to complement the Code.
- 9 As set out in paragraph 106 of BCE Inc.'s application for renewal, Bell Media is now requesting to eliminate all of the behavioural safeguards from its conditions of licence in order to "minimize duplication" and redundancy with the Code. While not disclosed in its renewal application, Bell is also asking the Federal Court of Appeal to declare the Wholesale Code *ultra vires*. Corus and Rogers have also requested the elimination of all of the behavioural safeguards from their conditions of licence on the basis that they have a condition of licence requiring adherence to the Code.
- 10 CBC/Radio-Canada is opposed to Bell Media, Corus and Rogers' requests. If the Commission renews their licences on the terms requested and if the Federal Court of Appeal declares the Code *ultra vires*, Bell, Corus and Rogers would no longer be subject to any behavioural safeguards. This would be contrary to the Commission's decision to impose conditions of licence on vertically-integrated entities in order to limit the potential for anti-competitive behaviour.

- 11 For the reasons set out above, the Corporation respectfully submits that the Commission should deny Bell Media, Corus, and Rogers' requests to delete the behavioural safeguards as conditions of licence over the next licence term.
- 12 CBC/Radio-Canada appreciates the opportunity to provide the Commission with these comments. The Corporation does **not** wish to appear at the oral hearing in November.

Yours truly,



Bev Kirshenblatt
Executive Director
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