



Broadcasting Notice of Consultation CRTC 2013-106

PDF version

Ottawa, 6 March 2013

Notice of hearing

6 May 2013

Montréal, Quebec

Deadline for submission of interventions/comments/answers: 5 April 2013

[\[Submit an intervention/comment/answer or view related documents\]](#)

The Commission will hold a hearing commencing on **6 May 2013 at 9:00 a.m. at the Hôtel Gouverneur Place Dupuis, 1415 Saint-Hubert, Montréal, Quebec**, to consider the following applications:

Applicant/Licensee and Locality

1. **Astral Media Inc.**
Various locations
Application 2013-0244-7
2. **Astral Media Inc., on behalf of BCE Inc. and certain licensed broadcasting subsidiaries**
Various locations
Applications 2013-0247-1, 2013-0248-9 and 2013-0367-7
3. **Astral Media Inc. on behalf of certain of its licensed broadcasting subsidiaries**
Various locations
Application 2013-0245-5
4. **TVtropolis General Partnership**
Across Canada
Application 2013-0124-1

Preamble

Items 1 to 3

The Commission received an application by Astral Media Inc. (Astral) and its licensed broadcasting subsidiaries (Item 1), for authority to change the effective control of its broadcasting undertakings to BCE Inc. (BCE) (the proposed transaction).

Subject to Commission approval, the closing of the proposed transaction would be preceded by multi-step corporate reorganizations within both BCE and Astral for tax

planning purposes and to facilitate the closing and the divestiture of certain assets.

To that end, the Commission has received applications by Astral on behalf of BCE (Item 2) to effect a multi-step corporate reorganization involving the transfer of assets of certain broadcasting undertakings to new entities to be established and controlled by BCE.

Finally, the Commission received an application by Astral (Item 3) to effect a corporate reorganization within Astral involving the transfer of the assets of certain of its broadcasting undertakings to new entities to be established and controlled by Astral.

Item 4 - TVtropolis

The Commission intends to consider, subject to interventions, item 4 during the non appearing phase of the hearing.

In accordance with section 35(1)(a) of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure, SOR/2010-277* (Rules of Procedure), the applicants and licensees are required to post the present notice of consultation or an electronic link to it on a page of their respective websites that is accessible from the home page by no later than five calendar days from the date of the present notice. It must remain there until the intervention deadline for this proceeding.

1. **Astral Media Inc.**
Various locations
Application 2013-0244-7

Application by **Astral Media Inc.** (Astral) for authority to change its effective control, and control of its licensed broadcasting subsidiaries, to BCE Inc. (BCE). The proposed transaction would be carried out by the acquisition of all outstanding shares of Astral by BCE and its new wholly owned subsidiary to be incorporated (BCE Subco).

Pursuant to the terms of the Arrangement Agreement, Astral's shareholders may elect to transfer their Astral shares to newly incorporated corporations (Holdcos) in exchange for shares of Holdcos, whose shares would be sold to BCE for the same consideration as would otherwise be received on the direct sale of Astral shares (the Holdcos Alternative).

Shareholders would have until closing of the proposed transaction to choose the Holdcos Alternative which, in certain circumstances, may require the Commission's prior approval.

Immediately following the closing of the proposed transaction, BCE would transfer all of its Astral shares and the Holdco shares to BCE Subco. Finally, Astral licensees would either,

- a) wind-up the Holdcos and the Astral entities (i.e., Astral Media Inc., Astral Media Radio Inc., Astral Broadcasting Group Inc., MusiquePlus inc. and The Family Channel Inc.) into their parent corporation BCE Subco, or

b) amalgamate the Holdcos and the Astral entities.

BCE is a public corporation controlled by its board of directors.

The transfer of Astral's shares and change of its effective control would occur pursuant to the terms of the Arrangement Agreement dated 16 March 2012 and of the subsequent Amending Agreement to the Arrangement Agreement dated 19 November 2012.

Considering the size and scope of the proposed transaction, which has the potential to reshape the Canadian broadcasting system and have an impact on the broader communications system, the Commission intends to discuss whether the proposed transaction is in the public interest. 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 of the 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.

The Commission may also discuss, among other things, the following:

Concentration of Ownership and Vertical Integration (Television)

Given the nature and the size of the proposed transaction, the Commission may wish to discuss the concentration of ownership and potential market dominance that the post-divestiture BCE/Astral entity would have in both language television markets in terms of: Category A discretionary services share; negotiating power with other distributors; presence in the most attractive genres (movies, sports and premium content); ability to negotiate program rights windows with programming suppliers and advertisers; and the potential negative impact that the proposed transaction could have on independent entities.

The Commission may wish to discuss the applicant's proposals regarding additional safeguards that would restrict potential anti-competitive behavior, including adherence to the *Code of conduct for commercial arrangements and interactions* set out in Appendix 1 to *Regulatory framework for vertical integration*, Broadcasting Regulatory Policy 2011-601, 21 September 2011, as amended from time to time, the expansion of the prohibition on tied selling, and the availability of programming rights for competing distributors.

The Commission may also wish to explore potential remedial actions that could be taken in case of non-compliance with existing and/or new safeguards, should the proposed transaction be approved.

Diversity of Voices

In *Diversity of voices*, Broadcasting Public Notice 2008-4, 15 January 2008 (Broadcasting Public Notice 2008-4), the Commission established that, as a general rule, it would not approve applications for a change in effective control that would result in the

control, by one person, of a dominant position in the delivery of television services to Canadians that could have an impact on the diversity of programming available to television audiences. The Commission also stated that 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, whereas it would carefully examine transactions where one person controlled between 35% and 45% of the total television audience share.

Astral submitted that in order to ensure compliance with the Commission's policies and address any concerns regarding market concentration, BCE would divest itself of 11 television undertakings: six in the French-language (TELETOON Rétro, Disney Junior, MusiquePlus, MusiMax, Historia and Séries+), four in the English-language (TELETOON Retro, Cartoon Network, Disney XD and Family Channel, including the related Disney Junior multiplex), and one in both languages (TELETOON).

Astral submitted that the combined BCE/Astral's viewing share would be 23.0% for the French-language market and 35.7% for the English-language market, following divestitures. Astral submitted that the proposed transaction poses no concerns for the French-language market, as the viewing share falls below the Commission's 35% threshold and that its potential impact on the diversity of voices in Canada in respect of English-language television is extremely limited. Astral stated that the divestitures will reduce BCE/Astral's position significantly in must-carry services, in both language markets, (making six of 13 Category A programming services available to other market participants) and will cause the combined BCE/Astral to exit from attractive genres including, among others, the music genre (in the French-language market) and the animation genre (in both linguistic markets).

Common Ownership Policy (Radio)

The Commission may wish to discuss whether the proposed transaction is consistent with the Common Ownership Policy for radio set out in Broadcasting Public Notice 2008-4, particularly in the markets of Vancouver, Calgary, Winnipeg, Toronto, Ottawa-Gatineau and Montréal.

In the proposed transaction, Astral, on behalf of Bell Media Canada Radio Partnership,¹ requested an exception to the Common Ownership Policy in Montréal in order to continue to operate the English-language AM commercial radio programming undertaking CKGM Montréal. In support of its request, Astral stated that an exception:

- would ensure that CKGM continues to provide a sports radio service to Montréal's English-language minority community; and

¹ Bell Media Inc. and 7550413 Canada Inc., partners in a general partnership carrying on business as Bell Media Canada Radio Partnership

- would have no adverse impact on any existing station and would not preclude the Commission from licensing new English-language stations in the future.

Astral stated that, in the event that the Commission determines that an exception is not warranted in the Montréal market, it would divest itself of CKGM or return its licence, as required by the Commission.

Value of the transaction

The Commission may wish to discuss the value of the proposed transaction, the valuation methodology applied to the assets and how the proposed value has been allocated between the various broadcasting undertakings.

Astral submitted that the total value of the transaction is \$3.395 billion. Astral also stated that the total value of the broadcasting assets (after divestitures) subject to tangible benefits is \$2.08 billion.

Proposed benefits package

Under the Commission's tangible benefits policy, applicants are required to propose tangible benefits amounting to at least 10% of the value of the transaction for all conventional and specialty television assets and 6% of the value of the transaction for all radio assets.

The Commission, in applying its benefits test, has been consistent and rigorous in requiring that expenditures proposed as tangible benefits (1) be truly incremental; (2) be directed to projects and initiatives that would not be undertaken or realized in the absence of the transaction; and (3) flow predominantly to third parties, such as independent producers.

Concerning television, Astral proposed a tangible benefits package in the amount of \$124.6 million, representing 10% of the value of the television undertakings (\$1.246 billion). Of these funds, 85% (\$105.91 million) would be dedicated to on-screen initiatives in keeping with the Commission's general approach, as outlined in *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*, Broadcasting Decision CRTC 2007-165, 8 June 2007 and *Vision TV – Acquisition of assets; CHNU-TV Fraser Valley and CIIT-TV Winnipeg – Change in effective control; ONE: The Body, Mind and Spirit Channel – Change in effective control; Classical Digital, CFZM, CFZM-FM, CFMZ-DR-1 Toronto, and CFMX-FM Cobourg – Corporate reorganization*, Broadcasting Decision CRTC 2010-193, 30 March 2010.

As for radio, Astral proposed a tangible benefits package representing 6% of the value of the radio undertakings (\$834 million) amounting to \$50.04 million. It consists of \$17.58 million for the French-language undertakings (35% of the package) and \$32.6 million for the English-language undertakings (65% of the package). The tangible benefits package will be spent over a seven-year period, in keeping with the Commission's general approach as set out in *Campus and community radio policy*,

Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010.

Astral indicated that the value of television and radio tangible benefits mentioned above have been adjusted based on the divestiture of certain television and radio undertakings.

The Commission notes that Astral has undertaken to file additional information relating to the divestiture and its effect on the value of the transaction and associated tangible benefits at the earliest opportunity.

As part of the public hearing, the Commission may wish to discuss the proposed benefits package in terms of incrementality, acceptability and compliance with the *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, and *Building on Success – A Policy Framework for Canadian Television*, Broadcasting Public Notice CRTC 1999-97, 11 June 1999, and could request alternative proposals with respect to any benefits that may be found to be unacceptable to the Commission.

Other issues pertaining to radio

BCE proposes to acquire 77 radio programming undertakings as well as several rebroadcasting transmitters.

The Commission may wish to discuss the applicant's proposals and commitments with respect to local programming, support to Canadian emerging artists and the use of new platforms, as well as the manner in which the proposed transaction may impact the local programming offering on the stations to be acquired and the promotion and development of Canadian emerging artists.

More specifically, the Commission may wish to discuss the manner in which the proposed transaction may improve and increase the local content of the stations to be acquired. This discussion could address subjects including content sharing, newsgathering, and levels of local, network and non-Canadian programming.

Licence renewal for certain undertakings

The Commission notes that it has received applications by Astral Media Radio inc., Astral Media Radio Atlantic Inc. and Astral Media Radio GP to renew the broadcasting licences for certain radio programming undertakings that will expire on 31 August 2013. These applications are set out in Broadcasting Notice of Consultation 2013-105, also issued today.

Additional information may be placed on the public record as it becomes available. The Commission encourages interested persons to monitor the public record and the Commission's website for additional information that they may find useful when preparing their comments.

Applicant's address:

1800 McGill College Avenue
 Suite 2700
 Montréal, Quebec
 H3A 3J6
 Fax: 514-939-1515
 Email: ndorval@astral.com

Websites to view application:

http://www.bell.ca/Regulatory_CRTC_hearings/Bell_applications.tab

<http://www.astral.com/en/press-room>

2. **Astral Media Inc., on behalf of BCE Inc. and certain licensed broadcasting subsidiaries**

Various locations

Applications 2013-0247-1, 2013-0248-9 and 2013-0367-7

Application by **Astral Media Inc.** (Astral), **on behalf of BCE Inc.** (BCE) **and certain licensed broadcasting subsidiaries**, to effect a multi-step corporate reorganization involving the transfer of the assets of 33 Bell Media Inc. (Bell Media) radio stations to new partnerships or corporations.

The radio undertakings are currently licensed to Bell Media and 7550413 Canada Inc. (OldSub), carrying on business as seven distinct general partnerships (the Seven Old Partnerships). Bell Media, the managing partner holding 99.99% of the voting interest in the Seven Old Partnerships, is wholly owned by Bell Canada and controlled by BCE. OldSub, the other partner holding the remaining 0.01% of the voting interest in the Seven Old Partnerships, is wholly owned by Bell Media and is controlled by BCE.

The proposed reorganization, if approved, would be completed through a series of transactions that are set out in the application. Commission approval and the issuance of new broadcasting licences, to new entities, under the same terms and conditions as those in the current licences, are required.

Following the corporate reorganization, the control of the radio undertakings would continue to be exercised by BCE.

Applicant's address:

1800 McGill College Avenue
 Suite 2700
 Montréal, Quebec
 H3A 3J6
 Fax: 514-939-1515
 Email: ndorval@astral.com

Websites to view application:

http://www.bell.ca/Regulatory_CRTC_hearings/Bell_applications.tab

<http://www.astral.com/en/press-room>

3. **Astral Media Inc. on behalf of certain of its licensed broadcasting subsidiaries**

Various locations

Application 2013-0245-5

Application by **Astral Media Inc. (Astral), on behalf of certain of its licensed broadcasting subsidiaries**, to effect a multi-step corporate reorganization involving the transfer of the assets of certain radio programming undertakings and specialty services to new corporations, as well as a change in ownership affecting the licensees of Historia, and Séries+, as well as and the ownership structure of Astral's interest in TELETOON Canada Inc.

The licensees involved in the transactions are owned and controlled by Astral, a corporation controlled by the Greenberg Family.

The proposed reorganization would take place prior to the closing of the acquisition of Astral by BCE, if approved. It would be completed through a series of transactions that are set out in the application. Commission approval and the issuance of new broadcasting licences, to new entities, under the same terms and conditions as those in the current licences are required.

Following the reorganization, control of the broadcasting undertakings would continue to be exercised by Astral.

Applicant's address:

1800 McGill College Avenue

Suite 2700

Montréal, Quebec

H3A 3J6

Fax: 514-939-1515

Email: ndorval@astral.com

Websites to view application:

http://www.bell.ca/Regulatory_CRTC_hearings/Bell_applications.tab

<http://www.astral.com/en/press-room>

4. **TVtropolis General Partnership**

Across Canada

Application 2013-0124-1

The Commission received an application by **Shaw Television Limited Partnership² (Shaw LP) and Shaw Media Global Inc. (Shaw Global), a new partner with Shaw LP in TVtropolis General Partnership** (collectively the applicant) for authority to acquire the assets of the national, English-language specialty Category A service TVtropolis,

² Shaw Television G.P. Inc. (the general partner) and Shaw Media Global Inc. (the limited partner), carrying on business as Shaw Television Limited Partnership

through the acquisition by Shaw Global of the partnership's units held by Rogers Communications Inc. (Rogers), the current partner with Shaw LP in TVtropolis General Partnership.

The applicant is also requesting a new broadcasting licence³ to continue the operation of the undertaking under the same terms and conditions as those set out in the current licence.

TVtropolis is currently owned by Shaw LP (66.67%) and Rogers (33.33%) and controlled by Shaw Communications Inc.

The transaction would not affect the effective control of TVtropolis which would continue to be exercised by Shaw Communications Inc.

Applicant's address:

181 Bay Street
Suite 4210
Toronto, Ontario
M5J 2T3

Fax: 647-776-2801

E-mail: jean.brazeau@sjrb.ca

E-mail to request electronic version of application: jean.brazeau@sjrb.ca

Procedure

Deadline for interventions or answers

5 April 2013

The new *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for content, format, filing and service of interventions and answers of respondents, the procedure for filing confidential information and requesting its disclosure, and the conduct of the public hearing. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."

An intervention or an answer from a respondent must be filed with the Commission and served on the applicant on or before the above-mentioned date. An answer from a respondent must also be served on any other respondent.

³ General Note: Licences of broadcasting undertakings operated (or to be operated) under a partnership arrangement are issued to all partners carrying on business pursuant to the terms of the partnership agreement entered into.

In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.

The intervention or answer must include one of the following statements in either the first or the last paragraph:

1. I request to appear at the public hearing.
2. I do not want to appear at the public hearing.

The applicant, respondents and interveners are permitted to coordinate, organize and file, in a single submission, interventions of other interested persons who share their position but do not wish to appear at the hearing as a “Joint Supporting Intervention.” More information on how to do so and a template for the covering letter to be filed by the parties can be found in *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010.

Interventions and answers will be considered by the Commission and will form part of the public record of the proceeding without further notification to parties, provided the procedures set out in the Rules of Procedure and this notice have been followed. Parties will be contacted only if their submissions raise procedural questions.

Submissions must be filed by sending them to the Secretary General of the Commission by **only one** of the following means:

by using the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

A true copy of each intervention or answer from a respondent must be sent to the applicant and, in the case of a respondent to an application, to any other respondent.

The Commission advises those who file and serve by electronic mode to exercise caution when using e-mail for service of documents, as it may be difficult to establish that service has occurred.

Parties must ensure that, before initiating service through electronic mode, they will be able to satisfy the Commission, upon request, that service was completed. The sender must keep proof of the sending and the receipt of the document for 180 days after the day on which it is filed.

Submissions longer than five pages should include a summary.

Each paragraph of the submission should be numbered. In addition, where the intervention is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

Interventions and answers must clearly identify the application referred to and indicate whether parties support or oppose the application, or, if they propose changes to it, include the facts and grounds for their proposal.

In the event that an application is brought to the oral phase of the hearing, and if parties wish to appear, they must provide reasons why their written interventions or answers are not sufficient and why an appearance is necessary. Parties requiring communication support must state their request on the first page of their intervention. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the public hearing.

Persons requiring communications support such as assistance listening devices and sign language interpretation are requested to inform the Commission at least twenty (20) days before the commencement of the public hearing so that the necessary arrangements can be made.

Important notice

All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.

The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein,

in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

An electronic version of the applications is available on the Commission's website by selecting the application number within this notice. It is also available from the applicants, either on their websites or upon request by contacting the applicants at their email addresses, provided above.

A list of all interventions and answers will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.

Documents are also available during normal office hours at the Commission offices and documentation centres directly involved with these applications, or, upon request, within two (2) working days, at any other Commission offices and documentation centres.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

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