



11 January 2011

Mr. Robert A. Morin
Secretary General
CRTC
Ottawa, ON
K1A 0N2

Dear Mr. Morin,

Re: Broadcasting Notice of Consultation CRTC 2010-926

An application by **BCE Inc.** (BCE), **on behalf of CTVglobemedia Inc.** (CTVgm) **and its licensed broadcasting subsidiaries**, for authority to change the effective control of CTVgm's broadcasting entities to BCE.

Introduction

1. The Canadian Conference of the Arts (CCA) is the oldest and largest umbrella organization representing the full spectrum of the arts, culture and heritage sector in Canada, English and French. CCA's mission is to be the national forum for the arts and cultural community in Canada; to provide research, analysis and consultations on public policies affecting the arts, and the Canadian cultural institutions and industries; to foster informed public debate on policy issues, and to advance the cultural life of Canadians.
2. Because broadcasting is the dominant cultural medium and since the *Broadcasting Act* (the Act) contains the most complete expression of cultural policy ever adopted by Parliament, the CCA has participated actively in CRTC processes for decades, including on several occasions in the past five years as the Commission's agenda accelerated.
3. The CCA supports BCE's acquisition of control of CTVgm, subject to the following priority conditions:

- BCE to provide tangible benefits based on the full value of the transaction without a discount of any kind, and
 - the maximum amount of the television benefits to be allocated to Programs of National Interest produced independently of CTVgm.
4. We would like to have an opportunity to appear at the public hearings to be held in Gatineau commencing February 1, 2011 in order to participate in this consultation on a topic of fundamental interest to the Canadian broadcasting sector and to all Canadians, and to address the issue of an ever increasing concentration of broadcasting powers in Canada.
 5. There are **two fundamental issues** which must be addressed in this massive acquisition of CTVglobemedia: the necessary *benefits package* to be included in this large transaction and the impacts of the ever increasing *conglomeration of broadcasting and media platforms* in Canada.

CRTC policy concerning benefits packages

6. The Commission's tangible benefits policy states clearly that the contributions proposed as tangible benefits must be 10% of the value of the transaction as accepted by the Commission for all conventional and specialty television assets and 6% of the value of the transaction for all radio assets.
7. In addition, the tangible benefits expenditures for all television assets should be: (1) incremental; (2) directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction; and (3) generally flow to third parties, such as independent producers.
8. In the case of the radio benefits, these should be made according to the Commission's amended approach as set out in the Campus and community radio policy, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010.
9. We note also that in the matter of the nature of this acquisition, CRTC policy states very clearly that benefit commitments are part of a licensee's obligations and, as such, they should be implemented regardless of any subsequent ownership change¹.

CCA position on the benefits package

10. The CCA has problems with both the amount and the nature of the benefits package proposed by BCE. On the former, the CCA urges the Commission to clearly establish the value attached to the transaction in order to decide on the proper level of benefits to be set as a condition. On the latter, the CCA urges the Commission to make sure that the package is of real public benefit and not to serve the private interests of BCE.

¹ *Public Notice CRTC 1999-97*. June 11, 1999.

11. BCE initially argued that its tangible package should be as low as zero dollars as it contributed \$230 million in 2000 for a tangible benefits package when it first acquired control of CTV. It held this controlling interest until it abandoned its convergence strategy in 2005 and reduced its stake to a nominal amount.
12. It is CCA's position that contrary to BCE's claims, benefits **are** payable. Despite the fact that BCE previously controlled CTV, they rescinded control of their own free will in 2005 in a restructuring. This is a new transaction, not related the purchase in 2000, and it involves the acquisition of a controlling interest so full benefits are payable and should be made a condition to authorizing the acquisition.
13. CCA also supports arguments put forward by other intervenors that BCE is not entitled to a 'discount' on any of the benefits. The fact that they may have paid benefits on a previous transaction using similar assets is a red herring. BCE sold those assets and is now pursuing a new purchase. We understand the CRTC provided a discount on benefits to Shaw when it acquired Canwest. While the CCA does not agree with that decision, all parties understand that it was a unique circumstance where the assets of Canwest were under bankruptcy protection. CTVglobemedia is not in financial straits and BCE is in no way financially compromised – *there is no case here for any discount.*
14. As mentioned above, based on CRTC policy, the tangible benefits should be no less than 10% of the value of the television assets, both conventional and specialty, and 6% of the value of the radio assets.
15. The CCA has no issue with the proposed benefits attached to the radio acquisition, provided the Commission makes sure that the value of the radio stations acquired is correct.
16. However, we have serious concerns about the proposed benefits package concerning the acquisition of the television assets. The benefits package reluctantly offered by BCE following several Commission requests is substantially lower than required for this level of transaction. The offer of \$220.8 million falls well short of the 10% required in this sale.
17. The CCA has always been a strong proponent of supporting Canadian content and stories made for Canadians by Canadians. As the Commission has acknowledged, Canadian drama and scripted comedy are the most underrepresented forms of programming content in the broadcasting system. Canada's private broadcasters spend many times more on importing U.S. dramas than they do on bringing Canadian stories to our screens. Yet drama and scripted comedy are essential to our cultural life. The current application provides an opportunity for the Commission to ensure that additional resources are allocated to such programming.
18. It is indeed integral in large transactions like this, that we ensure the continuing prominence of Canadian content and production. Furthermore, in keeping with a long-standing policy of the Canadian government, resources provided in a

benefits package should be directed primarily to independent producers. The *Broadcasting Act* specifically acknowledges the important role of independent producers in Canada's broadcasting system. The CCA supports the position of the Canadian Media Production Association that CRTC require at least 85% of the eventual benefits package goes to 'on screen initiatives' and at least 75% of that money should 'directly benefit the independent production sector'.

19. We strongly oppose BCE's proposal to utilize benefits money to produce "nation-building-multi-platform events' and "sports initiatives'. We do not think, for example, that tangible benefits should be directed to paying for CTV to provide the 2012 Olympics across all of Bell's platforms. They will do this without a benefits package because it is commercially viable.
20. The CCA also opposes BCE proposal to include in the benefits package capital expenditure related to the transmission of local stations in non-mandatory markets or to the distribution of its satellite signals to Canadians. The Commission has in the past been clear that it will not accept capital expenditures such as digital transmitters and satellites as a tangible benefit. We urge the Commission to reject this element of the application. It is our view that these costs are the price of doing business and are not a public good.
21. For reasons explained more fully in the next section of this brief and concerning the diversity of voices in the Canadian system, the CCA supports some recommendations made by other interveners. First, the CCA supports CACTUS' suggestion that an amount of \$30 million be set aside to create a Community-Access Media Fund similar to the one proposed at the spring Community Television hearings to support the creation of independent non-profit community TV channels. The establishment of truly independent multi-media centres as proposed by CACTUS and supported initially by the CCA would indeed constitute a net social benefit which could help address one of the negative aspects of the vertical integration which the Commission has finally begun to consider. It is our conviction that media centres that enable the average Canadian to learn about new media, develop media literacy skills, and participate in content production on all platforms (broadcasting and new media) represents a powerful free speech safety valve in keeping with the spirit of the Broadcasting Act.

We note that this initiative is something for which Bell has shown a recent interest: at the community television policy review in 2010, Bell proposed that community TV channels should be equally available to all distributors on all platforms, and by extension equally available to all Canadians. At that time, the company hoped to redirect 2% of its gross pay-television subscriptions toward such platform-neutral channels.

22. The CCA also supports the suggestion made by the Public Interest Advocacy Centre to set aside a sum of money to create a *Canadian Broadcasting Participation Fund*. It is CCA's position that this would constitute a real public benefit as it would favour the participation of non-commercial user interest groups concerned with cultural and diversity issues in broadcasting regulation.

23. Finally, and subject to the priority conditions identified at the outset of this brief, the CCA also supports the idea of funding a co-ordinated national awareness campaign about the transition to digital OTA television as put forward by a number of other intervenors.

The impacts of vertical integration

24. The CCA notes with interest that in Public Notice CRTC 2010-783, the Commission launched a public proceeding to review its regulatory framework relating to vertical integration.
25. Cynics may argue that after agreeing to the purchase of CanWest by Shaw and on the eve of agreeing to the acquisition of CTVglobemedia by BCE, this is a case of locking the barn door after the horses have bolted. We can only hope that this is not so and we have every intention of participating in the upcoming public consultation which, in our respectful opinion, must have a broader scope than was set out in the public notice. We are grateful that the Commission has allowed intervenors a good degree of latitude.
26. It is in the spirit of this preoccupation that we will make our final comments for today. The acquisition of CTVglobemedia by BCE will alter Canada's media landscape and increase vertical integration by combining Canada's largest telecommunications company with Canada's leading private broadcaster.
27. There is no doubt that Canadian broadcasting is undergoing massive restructuring. Over the past decade, there have been major consolidations of ownership with broadcasters buying independent specialty services only to be, in turn, taken over by multi-platform distributors. The private Canadian broadcasting system, which once was fragmented, is now at best an oligopoly with a near monopoly situation in French Canada.

New technologies have also revolutionized the environment. The Internet and now portable wireless technologies are becoming a more important interactive vehicle for the delivery of audiovisual materials and advertising. Revenues of over the air (OTA) broadcasters have stalled. Unfortunately, policy and regulation have not kept pace with these fundamental changes in our society.

28. In this acquisition, we see television broadcasting, radio, internet provider, other media, and a telecommunications giant joining together. Though we appreciate the nature of the market, we find it troubling that as large mergers occur, fewer and fewer Canadian voices will be heard. Canada relies on its dynamic cultural diversity, portrayed through a variety of media and voices. As we move into an era with fewer companies monopolizing the way Canadians interact with the world, there must be more regulations to ensure independent voices are seen, heard, and read in our media outlets.
29. As noted by the Commission in 2010-783, the transaction under review raises potential issues with respect to access for other Broadcasting undertakings to the distribution services controlled by BCE and we urge the Commission to apply appropriate protections to ensure equitable access. But this transaction,

and the acquisition of Canwest by Shaw raise again the question as to why the CRTC refuses to apply the same broadcasting policy to new platforms.

30. This issue is perfectly illustrated by the following statement made by the Chief Financial Officer for Bell and BCE, Mr. Siim Vanaselja: “The transaction purchase price represents an attractive standalone valuation for Canada’s leading media provider *even before upside opportunities from monetizing CTV’s programming across all of Bell’s broadband wireless and wireline platforms.*” (emphasis added)²
31. Therefore, the CCA will take the opportunity to state, once again, that the Commission should review its position regarding the regulation of so-called new media and ensure that its policies concerning the funding and exhibition of Canadian content are adapted *in the appropriate fashion* to all distribution platforms irrespective of the technology used.
32. More immediately, the CCA submits that the transaction should require that BCE maintain separate management structures for its satellite, other distribution, broadcasting and telecommunications operations.
33. Moreover, a robust mechanism must be implemented to ensure that BCE’s distribution undertakings treat all programming undertakings equally and do not give preferential treatment to those owned by BCE.
34. And finally, BCE should be prohibited from acquiring self-produced programs on an exclusive basis. Programs produced by any one of its broadcasting assets must be available to other broadcasters or distributors on whatever platform.

Conclusion

35. Canadians broadcasters and broadcast distribution undertakings exist in a privileged environment which has been enhanced over the past decade through a process of consolidation, deregulation and non-regulation. Yet, the basic principle behind the policies developed over the past 75 years remains the same: they use Canadian airwaves and make significant private profits with regulations (or the absence thereof) that protect their positions in the Canadian market and allow them to escape some of the obligations linked to their positions of privilege. It has always been and remains the position of the CCA that in exchange for these considerable privileges, they must contribute fully and equally to meeting the objectives of the *Broadcasting Act*, of which the CRTC is the Steward appointed by Parliament.
36. One of the numerous privileges broadcasters enjoy is the lack of a competitive application process when control of broadcasting undertakings is transferred.

² BCE Press Release: Bell to acquire 100% of Canada’s No. 1 media company CTV. September 10, 2010.

Instead, when ownership changes hands, the CRTC expects applicants to offer significant and tangible benefits to the communities they propose to serve and to the Canadian broadcasting system.

37. We can see no reason to provide any special consideration or discounts. In this case, we see a robust telecommunications conglomerate solidifying its position in an increasingly vertically-integrated environment by absorbing the number one private broadcaster in the country to its own strategic advantage.
38. Assuming that the Commission will approve this transaction, we urge you to hold BCE to its full obligations to contribute to the objectives to the *Broadcasting Act* by providing tangible based on the full value of the transaction. Of the television benefits, 85% must be directed to onscreen programming, with at least three quarters of this amount dedicated to "programming of national interest".
39. We also urge the Commission to impose safeguards to ensure broadcasting undertakings have equivalent treatment from the distribution systems owned and controlled by BCE Communications Inc and that exclusive content deals are prohibited.

We thank you for considering our position on this matter and look forward to presenting it during the public hearings process.

Sincerely yours,



Alain Pineau
National Director

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