



Redefining Diversity in the 21st Century Media Universe



Reply Comments
by the Canadian Association of Broadcasters

Broadcasting Notice of Public Hearing CRTC 2007-5
Diversity of Voices Proceeding

CAB Vision: The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

October 12th, 2007

Via e-mail

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

**Re: Final Reply-Broadcasting Notice of Public Hearing CRTC 2007-5:
Diversity of Voices Proceeding and Broadcasting Public Notice CRTC
2007-41 (PN 2007-41): *Call for comments on the Canadian Broadcast
Standards Council's Proposed Journalistic Independence Code,***

1. The Canadian Association of Broadcasters (CAB) – the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, and specialty, pay and pay-per-view services – is pleased to submit its final reply comments relating to the Commission's consideration of the above-noted Diversity of Voices Proceeding.
2. The CAB does not intend to comment on all the issues that have been raised in the Diversity of Voices proceeding. Rather, the CAB will limit the scope of its final comments to respond to the proposals discussed at the hearing aimed at introducing new rules to limit common ownership of specialty services or cross-media ownership (the CBC proposal) and providing guidelines to assess future transactions (the Bell Video Group proposal). The CAB will also use this opportunity to provide comments on the Étude Économique Conseil (EEC) study entitled: *Media Concentration and Diversity of Francophone Voices in Canada* commissioned by the CRTC and released after the completion of the hearing.

3. In addition, the CAB wishes to comment on the following issues raised at the hearing :
 - The filing of financial information by individual radio and television stations;
 - The unfairness of the current benefits policy as it relates to the transfer of ownership of broadcasting undertakings; and
 - The provision of news and information programming on private radio.

Rule Based System vs. Public Policy Approach to ensure Pluralism of Voices

4. During the Diversity of Voices hearing the Commission sought comments on two specific proposals. One proposal, submitted by the CBC, recommended the introduction of new regulations to limit, among other things, common ownership of discretionary services, and to introduce limits on cross-media ownership to ensure that an integrated company could not own a controlling interest in more than two sectors comprised of newsprint, radio and television (the 2 out of 3 rule). The other proposal, submitted by Bell Video Group, while based on the assumption that no new regulations are required to assess the future transfer of ownership of broadcast undertakings, recommended that the Commission adopt a layered approach to ensure a plurality of voices in the Canadian broadcasting system. Bell Video Group argued at the hearing that rather than rely on strict rules to assess the impact of consolidation on pluralism of voices, the Commission should adopt clear guidelines that would serve as an analytical framework which would in turn ensure fairness, predictability and greater regulatory certainty when assessing future transactions and their impact on the Canadian broadcasting system.
5. The CAB demonstrated in its written submission and again at the hearing that there is no diversity deficit in the Canadian broadcasting system, either in terms of diversity of programming or in terms of pluralism of viewpoints on subjects of public interest. To this end, the CAB notes with interest that in its study *Media Concentration and Diversity of Francophone Voices in Canada*, EEC refers to the finding of a market-based economic model developed by researchers at Harvard Business School and Universidad de Los Andes that states: “Anecdotal accounts of cross-owned media firms often bring attention to the fact that this results in a homogenization of viewpoints. But, understanding the impact of cross-ownership also forces one to confront the question of when and why diversity in view persists in firms that are cross-owned. Cross-ownership per se does not give much more room to peddle the owner’s ideology, for the simple reason that suppressing this voice leaves a market voice that can be filled by an entrant.” This is especially true today given that a low market entry threshold to the Internet provides ample opportunity to disseminate conflicting viewpoints on matters of public interest, which furthers the objectives of the Broadcasting Act (the Act).
6. Furthermore, in the CAB’s view there has been no clear demonstration throughout this proceeding that the Commission does not already have the tools it requires to properly assess the impact of consolidation on the pluralism of voices which would have justified introducing additional layers of regulation such as the ones proposed by the CBC. Accordingly, the CAB is of the view that no new regulation is required with respect to common ownership or cross-media ownership of broadcasting media.

7. With respect to the Bell Video Group proposal, the CAB remains wary about the limitation of relying on firm guidelines to assess the impact of consolidation on plurality of voices. While it is highly pertinent to use an analytical framework to assess transfer of ownership applications, the CAB is of the view that relying on pre-established guidelines – or a plurality test – would have the unintended consequence of limiting the Commission's capacity to fully assess the merits of transaction in the broadcasting sector. The CAB submits that each transfer of ownership is unique, and accordingly must be assessed not only in terms of its impact on the plurality of voices, but be weighted against other important elements of the Act to determine if the approval of a proposed transaction serves the public interest.
8. In light of the need to achieve this balance, the CAB strongly believes that, given the size of the population, large geography and the specificity of the Canadian media marketplace, the public policy, case-by-case approach adopted by the Commission some thirty years ago to assess transfer of ownership of broadcast undertakings remains the best mechanism to provide fairness, predictability and clarity of regulation. This approach will best ensure that transactions in the broadcasting sector continue to serve the public interest.
9. This system has been based, rightly, on the philosophical principle that the Commission does not (and should not) solicit applications to transfer ownership or effective control of broadcasting undertakings. The onus remains on the applicants to demonstrate to the Commission that the applications filed are the best possible proposals under the circumstances, and thus serve the public interest and further the objectives of the Broadcasting Act.
10. Over the years, the Commission has adopted policies and used evaluation criteria to guide itself in assessing applications for the transfer of ownership or control of broadcast undertakings to ensure its decisions on transactions serve the public interest, as required by the Broadcasting Act.

The Usefulness of the current Public Policy Approach

11. The Commission developed a policy for, and regulatory approach to, applications requesting approval of the transfer of ownership and control of broadcasting undertakings, beginning in the 1970s.
12. The objective of the ownership policy, based on the Commission's mandate to further the objectives of the Act, was clear. First and foremost was the need to maintain a degree of diversity of ownership sufficient to ensure that the Canadian broadcasting system is varied and comprehensive and provides a reasonable opportunity for the expression of differing views on matters of public concern (Decision CRTC 72-316) denying an application by Bushnell Communications Limited, licensee of cable companies in the Gatineau area and of CJOH-TV Ottawa, to Western Broadcasting Company Limited, licensee of CHAN-TV Vancouver).
13. The Commission's development of a regulatory approach to the treatment of applications for approval of transfers began in 1969, one year after it was empowered to

regulate broadcasting. In a policy statement entitled “*On the Pricing of Broadcasting Undertakings*”, the Commission considered whether it should hold competitive hearings for the transfer of ownership applications. It never adopted this practice. By 1978, in a working paper entitled “*Proposed CRTC Procedures and Practices Relating to Broadcasting Matters*”, it found that there were such formidable obstacles to the implementation of a competitive process for transfer applications as to render it impracticable. The Commission opted instead to continue the development of a process to review benefits related to transfers of ownership.

14. In situations that raised issues of concentration of ownership, or a reduction in competition, the onus would be on the applicant for approval of a transfer to demonstrate that the transaction would be in the interest of the public, of the communities served and of the Canadian broadcasting system, and that it would provide significant and unequivocal benefits to advance the public interest (Decision CRTC 77-275, denying an application by Maclean Hunter Cable TV Limited to acquire all of the issued shares of Western Cablevision Limited and Decision CRTC 77-456).
15. Until 1979, the Commission expressed the view that, except in special circumstances, television undertakings should be independent of cable undertakings and that broadcasting undertakings should be separate from newspapers. In Notice of Public Hearing CRTC 1979-21 (NPH 1979-21), however, the Commission announced a proceeding into the question of cross-ownership within the context of the broader issue of concentration of ownership in order to review its position.
16. It was made clear, for example in NPH 79-21, in Decision CRTC 81-911, in which the Commission authorized the transfer of control of Cable TV Inc. to CFCF Inc., and in Decision 86-367) denying an application for authority to transfer the control of Télé-Métropole Inc., licensee of CFMT-TV Montreal and the holder of interests in television stations in Chicoutimi, Trois-Rivières and Sherbrooke, to Power Corporation of Canada that the Commission would maintain a case-by-case approach to transfers of ownership.
17. In NPH 79-21, the Commission stated:

“The Commission has not attempted to establish fixed guidelines or to set out ownership policies in regulations. It has instead dealt with ownership applications on the merits of each individual case, taking into account the particular factual circumstances. This approach has provided the Commission with the necessary flexibility to assess each application in the light of the objectives and requirements of the Act.”
18. In Decisions 81-911 and 86-367, it reiterated that, while the Commission must establish a general policy applicable on a nationwide basis, policies regarding ownership had not been set out in detail in the regulations, specifically so that the Commission could remain flexible enough to assess each case on its own merits and to study each application in the specific context of the region in question. In the Commission’s view, it also had to take into account, in each case, the impact of its decision on the future development of the broadcasting undertakings in question.

19. The Commission clarified, in Decision 86-367, that it would continue to deal with issues of concentration on a case-by-case basis. It would have to be demonstrated in each case that the application as filed was the best possible proposal in the circumstances and that the purchaser had demonstrated that the transaction would yield significant and unequivocal benefits to the communities served and to the Canadian broadcasting system as a whole, that the advantages of any concentration flowing from a transfer outweighed the disadvantages and that the transaction was in the public interest.
20. The Commission's concerns regarding any reduction in the diversity of expression available in a market that could result from transfers involving concentration of ownership led, nevertheless, to a policy generally restricting common ownership of over-the-air (OTA) programming undertakings of the same type in the same language in the same market. Thus, until 1998, the ownership policy for television and for radio restricted common ownership to one television station and one AM and one FM radio station in one language in a market. The policy was revised for radio in 1998 to permit up to the common ownership of 2 AM and 2 FM radio stations in larger markets. This revision was confirmed by the Commission in 2007. The Commission's common ownership policy for OTA television was confirmed in 1999 and remains the same today.
21. The Commission has viewed its common ownership policy as an effective tool to ensure a diversity of voices, particularly editorial voices in news and information and an appropriate level of competition in the media. Consistent with its case-by-case approach, it has allowed exceptions in certain circumstances and with appropriate safeguards.
22. As early as 1972, in Decision 72-316, the Commission clarified that, although a diversity of ownership was required to ensure a plurality of voices, the Canadian broadcasting system will, of necessity, contain a certain number of large units. This approach was reiterated in Decision CRTC 85-733, licensing Four Seasons Television Network Inc., controlled by CFCF Inc., licensee of CFCF-TV Montreal, to operate a French-language television station in the city. In Decision 86-367, the Commission emphasized that concentration of ownership within the broadcasting system is not itself necessarily a source of concern to the Commission, provided that there continues to be an effective degree of diversity of ownership and of programming sources to ensure that the obligations of the Act are met. The Commission added that the broadcasting system must be composed of broadcasting holdings of various sizes, including larger entities with large pools of resources and with the capacity to produce Canadian programming of competitive quality.
23. Also consistent with the Commission's approach, the onus has remained on the applicant to demonstrate that a transaction which raises concerns with respect to concentration of ownership, such as a reduction in diversity or in competition, or a transaction that requires an exception to the common ownership policy, is in the public interest. Where the advantages of strict adherence to the Commission's policy have been outweighed by the circumstances surrounding an application and/or the commitments made to countervail the disadvantages of an exception, the Commission has approved the application.

24. By the 1990s, the Commission's approach to transfers of ownership had evolved, with the development and maturing of the broadcasting industry, into its present form. It has allowed, and continues to allow, the Commission to exercise a reasonable degree of discretion in assessing ownership applications, in the pursuit of the public interest, while providing adequate guidance to the industry with respect to its regulatory approach.
25. The circumstances giving rise to concerns in applications involving common ownership in a market, concentration of ownership, vertical integration or cross-ownership, the mitigating factors warranting exceptions, and the countervailing measures expected of an applicant requesting an exception, can be gleaned from Commission decisions, as exemplified in the summary of recent decisions attached as an appendix to our reply.
26. The concerns expressed by the Commission, in addition to the common ownership of two undertakings of the same type in the same language in the same market have included:
 - the vertical integration of broadcast programming undertakings and distribution undertakings in the same market (Decisions 94-923 and 2000-747);
 - the cross-ownership of broadcasting media and print media in the same market (Decisions 94-923, 97-482, 2000-747 and 2003-205);
 - the cross-ownership of broadcasting and telecommunications businesses in the same markets (Decision 2000-747);
 - the increase for one party in overall media influence in a particular market, or the Canadian broadcasting system, that would result from a transaction (Decisions 85-733, 93-37, 94-745, 94-923, 97-84, 2000-221, 2000-747 and 2003-205); and
 - the likelihood that a transaction would affect negatively the ability of the licensee to maintain existing broadcasting services and to discharge its obligations under the Act (Decisions 97-84 and 2003-205).
27. Among the mitigating circumstances considered by the Commission in dealing with applications that raise issues of concentration have been:
 - the longstanding common ownership of two undertakings, contrary to the Commission's common ownership policy and the impact of their separation (Decision 94-745 and 2000-221);
 - the need of financial rescue of an undertaking to ensure its continued performance (Decisions 93-73, 94-745, 97-84, 97-482, 2000-221 and 2003-205);
 - the existing level of overall media competition in the relevant market (Decisions 85-733, 2000-221 and 2003-205);
 - the unique conditions facing the media in certain markets, particularly in the Quebec market (Decisions 85-733, 93-37, 97-84 and 2003-205);
 - the ability and/or willingness of the purchaser to maintain or improve existing broadcasting services (Decisions 93-37, 94-745, 97-84, and 2003-205); and
 - whether approval would result in a net reduction in the number of voices in a market (Decisions 94-923 and 2000-221).
28. Not surprisingly, the measures considered adequate as an alternative to structural separation or separate ownership have been based largely on solutions that mimic

separation. They consist of the structural safeguards that would prevail when two undertakings are under separate ownership. They have included:

- requirements for the separation of the news function, physically and/or editorially (Decisions 94-923, 97-482 and 2000-221);
- requirements for the separation of programming departments and programming management with decision-making power (Decisions 85-733, 93-37, 94-745, 94-923, 97-482 and 2000-221);
- limitations on participation on respective corporate boards (Decisions 94-923 and 97-482);
- the application of a code of professional conduct to ensure editorial independence in situations of cross-ownership of media (decision 97-482);
- the presence of an access policy in situations of vertical integration of programming and distribution (Decisions 94-923 and 2000-747); and
- the existence of rules and regulations limiting the possibility of anti-competitive behaviour in situations of cross-ownership of broadcasting and telecommunications (Decision 2000-747).

29. Programming safeguards have also been imposed to prevent the homogenization of programming on multiple stations, and an increase in the local programming of a commonly-owned station to prevent the regionalization of the programming on two stations, at the expense of diversity (Decision 2000-221).
30. The review of landmark ownership transfer decisions shows the usefulness and timeliness of maintaining the current, case-by-case approach adopted by the Commission. As an example, in Decision CRTC 93-37, the Commission assessed the applications by CHUM to acquire CKLW and CKLW-FM in light of its common ownership policy limiting, at the time, the ownership of radio stations in the same market in the same language to one AM station and one FM station, given that CHUM already owned the other two private radio stations in Windsor.
31. The Commission stated, in approving an exception to its policy, that it had taken into consideration the unique circumstances of the Windsor radio market which, immediately adjacent to Detroit, Michigan, experiences intense competitive pressure from a multitude of U.S. radio signals. It had also taken into consideration the fact that, as a group, the four local Windsor radio stations had operated at a loss over the entire 1981-1991 period, and the strong possibility that CKLW and CKLW-FM would have gone silent if the transaction had been denied. Yet, at the same time the Commission ensured that CHUM's proposal would maintain diversity in the Windsor market by retaining the four existing formats of the stations which targeted four different audiences. The Commission therefore approved the applications, stating that the approval was in the public interest to ensure the continuation of all four Canadian radio stations in Windsor.
32. To this day, the common ownership of the four private radio stations in Windsor remains the only exception to the current Radio MLO Policy (which prevents an owner from owning more than three radio stations in the same language in the same market in markets where there are less than eight commercial radio stations in operation). More importantly, the exception to the MLO policy granted by the Commission has allowed

the licensee to establish a viable business model for private radio operation in Windsor, repatriating Windsor listening hours to Windsor radio stations, which in turn has ensured that Windsor listeners continue to have access to a diversity of Canadian radio programming choices and Canadian programming content.

33. For all the reasons outlined above, the CAB remains convinced that the public policy, case-by-case approach still constitutes the most effective tool in assessing transfer of ownership of broadcast undertakings in order to foster plurality of voices in the broadcasting system while taking into account the other provisions of the Act, thus ensuring that transactions in the broadcasting sector serve the public interest.
34. That said, the CAB believes that the Commission's overall regulatory framework must also continue to recognize the important contribution of smaller less integrated independent broadcasting players that offer diversity in the Canadian broadcasting system. As such, the CAB considers that it is in the public interest to strengthen all Canadian programming services, public and private, big and small to ensure that they are given every opportunity to remain relevant to Canadian audiences.

Étude Économique Conseil (EEC) study

35. The CAB has carefully reviewed the EEC study entitled: Media Concentration and Diversity of Francophone Voices in Canada. The CAB notes that in establishing its recommendations EEC states, that:

“the advantages sought from merging undertakings will thus not, in many cases, be derived primarily from economies of scale (obtained by streamlining costs), but from the merged undertakings’ ability to draw a bigger audience by providing better quality, more attractive, and more expensive productions (stars, location shooting, foreign correspondents, live reporting on events, etc.). In short, combined ownership does not give the group carte blanche to ignore voices, since doing so would open the door to potential competition.”

36. As this logic applies to the francophone broadcasting market, EEC further states that:

“In the case of the French-Canadian market, linguistic differentiation offers some protection for the expression of diverse voices, but given the relatively small size of the market, a large number of small operators would not necessarily guarantee true diversity or effective expression of voices. Hence, market conditions that favour the establishment of a small number of operators able to internalize the advantages of integration and size can contribute to diversity of voices.” (emphasis added)

37. This leads EEC to conclude that *“the current context calls for regulatory refocusing on groups’ programming and content, along with the easing of a priori limitations respecting concentration, something that would more specifically come under the Competition Act.”*
38. The CAB agrees with EEC's assessment of media consolidation and its impact on diversity of voices in the Francophone market which shows that consolidated entities can contribute to diversity of voices, and that in any event, no new or specific regulation is required to restrict common ownership or cross-media ownership in the francophone market or the Canadian market as a whole. We also agree in principle with EEC's

assessment that the integrated world of converging media, as well as the advent of unregulated alternative digital media, calls for the regulator to develop a more comprehensive and holistic approach to monitoring of the broadcasting system.

39. However, the CAB strongly disagrees with EEC's recommendation to create a new class of licence that EEC defines as "multimedia groups/networks" on the basis of criteria related to the groups' types of multiservice/multimedia operations (horizontal/vertical integration aspects). In EEC's view this new class of licence is needed to ensure that "each (consolidated) group be required to appear to explain its intentions and commitments with regard to diversity". In the CAB's view, there is no need to create a new class of licence to achieve this objective. As has been demonstrated in the past, the Commission normally outlines at licence renewal time, areas of concern it wishes to discuss with the licensee, which may include, discussions with the owner on the issue of diversity. As an example, this issue was extensively discussed in the context of CanWest Global (CanWest MediaWorks) and CTVglobemedia (formerly Bell Globemedia) over-the-air television stations' licence renewals in 2001 (respectively, Decision CRTC 2001-458 and CRTC 2001-457).
40. EEC also recommends giving the Commission the power to intervene should "*change the behaviour and practice of a specific group or business arrangements/agreements between undertakings*". Should such circumstances occur, EEC recommends that the Commission intervene "*by having the licensee(s) in question reappear before its officials and by exercising an audit privilege if required*". The CAB is of the view that such a mechanism is unnecessary, simply because each licensee is well aware that it must go through a regulatory process with the Commission to renew its licence. Further, the CRTC has approved the CBSC to consider and manage a complaint process. Each licensee knows that a contentious licence renewal is both cumbersome and costly, and, in the case of publicly traded companies, would create uncertainty that could negatively impact their stock performance.

Filing of Financial Information by Individual Stations

41. The CAB wishes to take this opportunity to clarify its comments with respect to questions raised by the Commission on the usefulness of releasing, on an annual basis, financial information of individual radio and television stations owned by major broadcasting groups. As it stated at the hearing, the CAB is not opposed to the idea of having more information, or more detailed information, released annually to help the Commission and stakeholders reach a better understanding of the evolution of the financial situation of the broadcasting industry, including the radio and conventional television sectors. To this end, the Commission will note the CAB position stated at the Radio Review Proceeding NPH 2006-01 that the Commission should provide publicly, on an annual basis, consolidated information on the financial performance of radio stations operating in markets of less than 250,000 population. This would assist all stakeholders to better understand the reality of smaller market radio stations, and the potential impact of multiple licensing of new radio stations in smaller markets.
42. However, the CAB is opposed to the existing system where only individual pay and specialty services are currently subjected to having their financial information released

publicly. The Commission's rationale for requiring that these individual services' financial information be made available publicly, as set out in Public Notice CRTC 2006-19, has been that Pay and Specialty channels are not operating in a competitive environment, because, among other things of the "one per genre" regulation and access to Commission-set wholesale rates when services are distributed as part of the basic service. The CAB notes, however, that Broadcast Distribution Undertakings (BDUs), with whom Pay and Specialty services have to negotiate for their wholesale rates, are not subject to the same requirement. As stated at the hearing, the CAB believes that, while it is important to have information for the public, providing detailed financial information per service for radio and for television is not warranted. That said, should the Commission decide that releasing financial information on individual radio and television stations is warranted and serves the public interest, as a matter of fairness, the CAB strongly urges the Commission to apply the same requirement to all the components of the broadcasting sector, including BDUs and the public broadcaster, and to release the financial information of all sectors at the same time.

The Benefits Policy

43. Likewise in the case of the benefits test, the CAB urges the Commission to apply the same requirement to all the components of the broadcasting sector. To this end, as we have stated at the Public Hearing, the CAB notes that the Commission eliminated, without public process, the benefits test for BDUs in 1996. In Public Notice CRTC 1996-69, Call for Comments on a Proposed Approach for the Regulation of Broadcasting Distribution Undertakings, the Commission stated that:

"Given that entry to the cable industry has been restricted to date, and in the absence of competing applications for authority to transfer the ownership or effective control of existing cable undertakings, the benefits test has served the purpose of ensuring that the Commission, in dealing with such transfers, is presented with the best possible proposal, taking into account the size and nature of the proposed transaction. However, with adoption by the Commission of a policy that removes all or most of the existing licensing restrictions on market entry and which, in fact, encourages the imminent entry of new competitors using a variety of distribution technologies, the underlying rationale for applying the benefits test in considering future applications for authority to transfer the ownership or control of distribution undertakings has essentially disappeared."

In light of the above considerations, and because the Commission has already begun to license competitors to cable using DTH and MDS technologies, the Commission has concluded that it is no longer necessary to apply the benefits test in the case of transfers of ownership or control of distribution undertakings. (emphasis added)

Accordingly, the Commission announces that, in assessing an application for authority to transfer the ownership or effective control of a broadcasting distribution undertaking, it will no longer require prospective purchasers to identify the significant and unequivocal benefits that will result if the transaction is approved. This approach will apply to all such applications published after the date of this notice. (emphasis added)

44. The CAB submits that the private radio, television, and pay and specialty sectors are evolving in a very competitive environment with wide access and useage of the Internet and other alternative digital platforms. Accordingly, the CAB submits that there is no rationale that justifies the Commission to maintain an asymmetrical, private broadcasters comply with the benefits test in the case of transfer of ownership or control of a radio station, a television station or a discretionary service, but BDUs are not required to adhere to this same policy. The CAB submits that it is therefore time to change the policy and eliminate the benefits test in the case of future transfers of ownership of broadcast undertakings.

The Provision of News and Information Programming on Private Radio

45. Finally, the CAB wishes to provide some comments on the issue of the provision of news and information programming on commercial radio in Canada, both in the French and English markets. Some interveners have questioned the quantity, quality and the diversity of news provided by commercial radio, and have recommended that the Commission reintroduce news quotas for private radio.
46. The CAB notes that the number of English-language news/talk radio format stations has increased by 25 % over the period of 2002 to 2006, from 28 in 2002 to 35 in 2006. While the number of news/talk stations has remained relatively stable in the Francophone market, the CAB notes that in 2004, Corus converted one of its Montreal French-language stations from a modern rock format station to an all talk station, the first all-talk FM station to operate in Canada. That change of format from music to all talk was successful: CHMP-FM more than doubled (171 %) its ratings.
47. Overall, news/talk stations in both the French and English markets have substantially increased their share of listening hours over the course of the last five years. The English-language news/talk stations have increased their share of tuning by 122 %: from 5 % in 2002 to 11.1 % in 2006. Likewise, French-language news/talk stations have seen their share of the overall listening hours of francophone listeners increased from 6 % in 2002 to 12.8 % in 2006, which represent a growth of 113 %.
48. Furthermore, the CAB notes that in many markets across the country, news/talk radio stations rank very high in the ratings. For instance, news/talk stations rank number 1 and 2 in the Winnipeg radio market, and number 1 and 3 in the Ottawa English-language market. Three news/talk stations rank among the top ten most listened to stations in the very competitive Toronto radio market.
49. These statistics clearly show that Canadian listeners in both the French and English markets are satisfied with the quantity, quality and the diversity of news and information programming provided by the private radio sector. Furthermore, the CAB notes that in the 2006 Commercial Radio Policy decision (BPN CRTC 2006-458) the Commission changed its definition of local programming which clearly states that *"In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports, coverage, and the promotion of local events and activities."* Therefore, the CAB considers that, there is no rational that justifies the Commission reintroducing news quotas on private radio.

50. The CAB appreciates the opportunity to provide its comments.

Sincerely,

Original signed by Glenn O'Farrell

Glenn O'Farrell
President and CEO

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Redefining Diversity in the 21st Century Media Universe

Appendix A:

Précis of CRTC Decisions

Decision CRTC 85-733

Decision CRTC 93-37

Decision CRTC 94-745

Decision CRTC 94-923

Decision CRTC 97-84

Decision CRTC 97-482

Decision CRTC 2000-221

Decision CRTC 2000-747

Decision CRTC 2003-205

Broadcasting Notice of Public Hearing CRTC 2007-5

Diversity of Voices Proceeding

DECISION CRTC 85-733

In Decision CRTC 85-733, 6 September 1985 (Decision 85-733), the Commission approved the application of Four Seasons Television Network Inc. (Four Seasons), among four competing applications, to operate a new French-language over-the-air television service in Montreal. The control of Four Seasons would be held by CFCF Inc. (CFCF), the controlling shareholder of CFCF-TV Montreal, an English-language CTV television affiliate, as well as of an AM and an FM radio station in Montreal and of CF Cable TV Inc. (CF Cable), a cable distribution undertaking servicing 155,000 subscribers in part of Montreal and in Laval.

The Four Seasons application thus raised issues of concentration of ownership of broadcast media in the same market.

The Commission emphasized, in Decision 85-733, that, in assessing the possible impact of increased concentration of media ownership in a given market, the determining factor must rest with the advantages that will accrue to the public in general and to the broadcasting system as a whole and whether these advantages outweigh the disadvantages that could flow from it, in the public interest. It identified the problems generally flowing from concentration of ownership as the lack of diversity of information and the excessive control that could be exercised over the sources of information in the market, problems more likely to arise, in its view, in markets in which the sources of information are relatively limited. It stressed that, in Montreal, there was already a unique abundance and diversity of media in both French and English, including radio and television stations, daily newspapers and numerous periodicals.

The Commission noted that the vast majority of the audience to the Four Seasons station would be distinctively different, culturally and linguistically, from that of CFCF-TV. It also took into consideration the assurance given by Four Seasons that diversity would be ensured, despite the sharing of facilities and administrative and management services that would assist Quatre Saisons in its first years of operation, through the management structures in place: two separate directors of programming; no programming relationship between CFCF-TV and Four Seasons; and separate newsroom staff for the two stations.

The Commission concluded, in Decision 85-733, that the public interest would be served by granting a licence to Four Seasons and that the resulting advantages for French-language television in Quebec outweighed the possible disadvantages.

Commission Concerns:

- the increase for one party in overall media influence in a particular market that would result from a transaction

Mitigating Circumstances:

- the existing level of overall media competition in the relevant market; and
- the unique conditions facing the media in the Quebec market

Measures Imposed:

- requirements for the separation of programming departments and programming management with decision-making power

DECISION CRTC 93-37

Decision CRTC 93-37, 29 January 1993 (Decision 93-37) considered an application by CHUM Limited (CHUM) for authority to acquire radio stations CKLW and CKLM-FM Windsor from Trillium Communications Limited (Trillium).

Given that CHUM owned CKWW and CIMX-FM Windsor, the other two private radio stations in Windsor, the Commission assessed the applications in light of its common ownership policy limiting, at the time, the ownership of radio stations in the same market in the same language to one AM station and one FM station.

The Commission stated, in approving an exception to its policy, that it had taken into consideration the unique circumstances of the Windsor radio market which, immediately adjacent to Detroit, Michigan, experiences intense competitive pressure from a multitude of U.S. signals. It had also taken into consideration the fact that, as a group, the four local Windsor radio stations had operated at a loss over the entire 1981-1991 period. In fact, Trillium had stated in its application that, if approval of its proposed transaction were denied, it might be obliged to cease the operation of CKLW and CKLW-FM.

The Commission also emphasized, in Decision 93-37, that it had acknowledged in the past the special characteristics of the Windsor radio market and taken an extraordinarily flexible approach to regulation of the FM radio stations in that city, compared to that imposed on FM radio in other markets.

CHUM had submitted in its application that the major benefit of its proposal was its commitment “to maintain two Windsor radio signals that might otherwise go silent” by achieving, through common ownership and some consolidation, synergistic relationships and economic efficiencies that would make possible the profitable operation of all four stations. CHUM had assured the Commission that its proposal would nevertheless maintain diversity in the Windsor market by retaining the four existing formats of the stations which targeted four different audiences. It made a commitment to employ a news supervisor at each station responsible for selecting, editing and packaging the news solely for that station’s target audience, although its plan was to operate one news centre for all four stations, with one shared news director and news staff.

The Commission approved the applications, stating that it was satisfied that the unique circumstances of the Windsor market warranted an exception to its common ownership policy, in order to ensure the continuation of all four Canadian radio stations in Windsor and that its approval was therefore in the public interest.

Common Ownership Policy:

- two radio stations in the same language in the same market

Commission Concerns:

- the increase for one party in overall media influence in a particular market that would result from the transaction

Mitigating Circumstances:

- the need of financial rescue of an undertaking to ensure its continued performance;
- the unique conditions facing the media in the market; and
- the ability and/or willingness of the purchaser to maintain or improve existing broadcasting services

Measures Imposed:

- requirements for the separation of programming departments and programming management with decision-making power

DECISION CRTC 94-745

In Decision CRTC 94-745, 14 September 1994 (Decision 94-745), the Commission approved applications by a division of CHUM Limited to disaffiliate from the CBC CKVR-TV Barrie, Ontario, a station which it had acquired in the late 1960s, and to operate CKVR-TV as an independent station providing local service to Barrie.

The Commission noted, in Decision 94-745, that it had examined CHUM's 1994 applications against the background of Decision CRTC 78-513, 26 July 1978 (Decision 78-513). In Decision 78-513, CHUM had been granted approval to acquire effective control of CITY-TV Toronto, despite its ownership of CKVR-TV, since CKVR-TV provided primarily a rural CBC affiliate service to the Barrie region with, the Commission stressed, negligible viewership in Metro Toronto, despite its optional cable distribution in that city. Decision CRTC 78-513 had effectively allowed CHUM, the Commission stated in Decision 94-745, to act as a financial guarantor of an unprofitable television station with accumulated losses and the unwillingness of a number of its shareholders to continue to provide it with continued financial support. It added that, given the close proximity of CITY-TV and CKVR-TV, Decision 78-513 had in fact created an exception to its common ownership policy because of CITY-TV's difficult financial circumstances and given CHUM's commitment to maintain the regional orientation of CKVR-TV.

CHUM described its 1994 applications as a survival plan for CKVR-TV, who was experiencing substantial financial losses, due in large part to the fact that it had very little inventory to sell in prime time, the period when most CBC network programming was broadcast. It argued that only in taking advantage of CHUM's common ownership of CKVR-TV and CITY-TV to lower programming costs, in part through the joint purchase of program rights, could CKVR-TV survive.

The Commission stated, in Decision 94-745, that its underlying purpose in continuing to allow an exception to its common ownership policy in this case was to ensure that the two stations remained in operation as viable undertakings offering valued local service to their respective audiences. It required, however, adherence to certain safeguards and constraints with regard to the programming orientation of CKVR-TV and the scheduling of common programming on two television stations at different times in prime time to maximize viewership to CKVR-TV in Toronto. Such constraints would address the potential undesirable effects created by the continued exception to the Commission's common ownership policy with respect to ensuring diversity among broadcast voices in a given community and avoiding the conferring upon one broadcaster of an unfair competitive advantage over others providing service to the same market.

Common Ownership Policy:

- two television stations in the same language in the same market

Commission Concerns:

- the increase for one party in overall media influence in a particular market that would result from the transaction

Mitigating Circumstances:

- the longstanding common ownership of two undertakings, contrary to the Commission's common ownership policy and the impact of their separation;
- the need of financial rescue of an undertaking to ensure its continued performance; and
- the ability and/or willingness of the purchaser to maintain or improve existing broadcasting services

Measures Imposed:

- requirements for the separation of programming departments and programming management with decision-making power

DECISION CRTC 94-923

In Decision CRTC 94-923, 19 December 1994 (Decision 94-923), the Commission approved, in part, the transfer of effective control of Maclean Hunter Limited (MHL) to Rogers Communications Inc. (RCI).

MHL's assets involved extensive participation in Canada's newspaper and magazine industries, particularly the Sun chain of dailies in Toronto, Ottawa, Calgary and Vancouver, the Financial Post, and the national Macleans magazine. They also involved extensive broadcast holdings in cable distribution and in radio, as well the ownership of the CTV television affiliates in Calgary and Lethbridge, CFCN-TV and CFCN-TV-5 and 14.3% of the CTV Television Network.

Considering RCI's own extensive involvement in cable and in radio, issues of concentration of ownership, of cross-ownership in the media, and of vertical integration that would result from approval were raised.

Chief among the issues addressed in Decision 94-923 was the concern arising from the increased potential for general media power and influence that approval would confer upon RCI, given the unprecedented size of the transaction and, in some cases, the specific nature of the undertakings involved. These issues were discussed generally under two headings: the preservation of a diversity of media voices available in the areas affected and fair access by third parties to the extensive cable holdings that would result with MHL's and RCI's cable holdings under one owner.

The question of the diversity of media voices raised the cross-ownership of television and radio outlets in Calgary and Lethbridge and the cross-media ownership with print in the Ottawa, Toronto and Calgary markets where, with approval, RCI would own both daily newspapers and radio outlets and, in Calgary and Lethbridge, television stations as well.

The Commission stated that, although it had permitted RCI an ownership role in television services earlier, by permitting it to rescue the financially-troubled CFTM-TV Toronto, a multilingual station, it was not prepared to allow it to own mature and profitable television stations such as CFCN-TV and CFCN-TV-5, which are not in need of either nurture or financial rescue and, more significantly, 14.3% of the CTV Television Network. The Commission was of the view that approval would not only reduce the number of media voices in Calgary and Lethbridge but, more significantly, would extend as well RCI's media influence in a further national media voice through participation in the CTV network. It concluded that approval of that part of the transaction would not benefit the Canadian broadcasting system or serve the broader public interest.

Decision 94-923 thus required, as a condition of approval, that RCI file, within twelve months, applications for the transfer of CFCN-TV and CFCN-TV-5 to a third party and that, likewise, RCI divest of the 14.3% shareholding in the CTV Television Network.

With regard to the cross-ownership of daily newspapers and broadcasting outlets which would give RCI a national editorial voice and result in a net reduction in the number of distinct media voices in Toronto and Ottawa, in the Commission's view, a clear separation

between the news and editorial voices of the newspapers on the one hand, and those of the local radio stations on the other, was required. The Commission accepted RCI's commitments to implement safeguards in respect of its newspaper and radio operations, whereby there would be independent operation of each sector, and separate general managers and editors, and no sharing of management personnel between entities. In addition, neither E.S. Rogers nor any officer of any RCI company would sit on the editorial board of the Toronto Sun or the Financial Post.

The Commission was also satisfied, in Decision 94-923, that the public interest would be served by a significant expansion in the size of RCI's cable operations so that it "may lead the industry more effectively towards meeting the challenges of the emerging competitive communications environment". In response to interveners' concerns regarding the issue of concentration centered upon the increased power and influence of RCI through its cable holdings and RCI's declared interest in mounting new services for distribution on cable, the Commission required RCI to file an acceptable policy for fair and equitable access to its cable undertakings.

Commission Concerns:

- the vertical integration of broadcast programming undertakings and distribution undertakings in the same market;
- the cross-ownership of broadcasting media and print media in the same market; and
- the increase for one party in overall media influence in a particular market, or the Canadian broadcasting system, that would result from the transaction

Mitigating Circumstances:

- whether approval would result in a net reduction in the number of voices in a market

Measures Imposed:

- divestiture of two television stations;
- requirements for the separation of the news function, physically and/or editorially;
- requirements for the separation of programming departments and programming management with decision-making power;
- limitations on participation on respective corporate boards;

the presence of an access policy in situations of vertical integration of programming and distribution

DECISION CRTC 97-84

In Decision CRTC 97-84, 27 February 1997 (Decision 97-84), the Commission addressed an application by Le Groupe Vidéotron Ltée (GVL), and its subsidiaries, Vidéotron Cable and Télé-Métropole, licensee of CFTM-TV Montreal and its French-language television network (collectively TVA), for approval of the transfer of control of CFCF inc. and its subsidiaries, including CF Cable TV, the licensee of CFCF-TV Montreal, the English-language CTV affiliate, and the licensee of CFJP-TV Montreal and its French-language television network known as Télévision Quatre Saisons (collectively TQS). GVL had made a commitment to sell CFCF-TV as part of its application.

The Commission approved GVL's application to purchase CF Cable whereby GVL would serve over 75% of all cable subscribers in Quebec, subject to the condition precedent that an application by parties not related to GVL for authority to acquire CFCF-TV and TQS be filed by 29 April 1997 and approved by the Commission by 22 August 1997.

The Commission noted that, in recent years, it had recognized the need for larger corporate entities possessing the resources necessary to lead the cable industry in research and development, enhancement of choice, service quality improvements and the extension to more Canadians.

The Commission's principal source of concern was that the common ownership of TVA and TQS would contravene its longstanding common ownership policy and would result in a high degree of concentration of ownership in the markets concerned. It emphasized that approval would have allowed GVL almost 50% of the total television audience in Quebec, and control of private television stations representing 72% of the total revenues and 76% of the total viewership of private television broadcasters in the province.

In Decision 97-84, the Commission stressed that one of its major preoccupations in assessing GVL's applications was the creation of the conditions necessary for the long term operation of a second private French-language television service in Quebec. It highlighted the fact that TQS had accumulated significant deficits in its ten years of operation and concluded that it was not convinced that, in the circumstances of the Quebec market, if GVL's financial projections for TQS were not realized, it would not wind up TQS to stem its losses. The Commission expressed concern that, given TVA's position in the market already, its efforts to revive TQS and provide for its long-term survival were not assured and pointed out that Cogeco inc. had expressed interest in acquiring TQS in an intervention to the application.

GVL had proposed measures to attenuate the risks of the high degree of concentration in the markets concerned that approval would make possible, including a commitment not to make use of shared programming or counter-programming in the schedules of the two stations, to institute separate management for news programming, as well as separate news staff, newsrooms and budgets for each network and to form a committee to monitor the editorial independence of the two networks. The Commission concluded, nevertheless, particularly since a single vice-president would be in charge of news for both networks, that the measures proposed were insufficient to allay the serious concerns raised in the particular circumstances of the French-language Quebec market where there would be common

ownership of the only two private, French-language conventional television network services. The Commission was not convinced that the operation of TQS would continue on a truly independent basis and that TQS would be revitalized by TVA for the long term.

The Commission was therefore not convinced that it was in the public interest to grant an exception to its common ownership policy, since there was no assurance that the provision of a diversity of voices would be assured through the continued independent positioning of TVA and TQS.

Common Ownership Policy:

- two television stations in the same language in the same market

Commission Concerns:

- the increase for one party in overall media influence in a particular market that would result from the transaction; and
- the likelihood that the transaction would affect negatively the ability of the licensee to maintain existing broadcasting services and to discharge its obligations under the Act

DECISION CRTC 97-482

In Decision CRTC 97-482, 22 August 1997 (Decision 97-482), the Commission approved the transfer of effective control of TQS inc., licensee of CFJP-TV Montreal and of the Télévision Quatre Saisons network (collectively TQS) to a consortium led by Communications Quebecor inc. (Quebecor), a subsidiary of Quebecor inc.

Quebecor inc. was described by the Commission, in Decision 87-482, as a large, vertically and horizontally integrated Canadian corporation carrying on operations in publishing and distribution, printing, newspapers and multimedia, including local dailies in Montreal and Quebec City. Approval would therefore result in the common ownership of the most widely read newspapers and of a general commercial television service in Quebec's major cities.

Quebecor described its application as a proposal to rescue a television station in serious financial difficulty, to revitalize it and to return it to profitability, thus maintaining the second French-language commercial television network in Quebec in operation. In its view, all other benefits it proposed should be assessed against this underlying advantage of the transaction.

In the Commission's view, Quebecor's proposal raised issues of editorial independence and of diversity of media voices. It considered, therefore, that its approval could not be given unless measures were taken to ensure a clear demarcation between the activities of Quebecor's dailies and weeklies and TQS's newsrooms that would guarantee such diversity.

The Commission imposed as conditions of TQS' licence the commitment by Quebecor to ensure TQS' editorial independence from Quebecor's newspapers by limiting the participation on TQS' board of directors who are members or were members of the board of directors of Quebecor or of its related companies. It also imposed as conditions of licence, as additional guarantees of independence and complete separation of the newsrooms, the implementation of a Code of Professional Conduct and the formation of a watchdog committee to review any related complaints. Such a code was to be filed within sixty days and any future amendment was to be approved by the Commission.

The Commission also expected Quebecor to respect its commitments, in the Commission's view essential to TQS' editorial independence, that no person associated with Quebecor would be associated with TQS' editorial committee, that the news services of TQS would remain separate from Quebecor's newspapers and print publications and that each would continue to establish its editorial policy independently.

The Commission considered primordial as well to the operation of TQS independently from any Quebecor-related entity that there be a clear line of demarcation between them, evidenced in part by the commitment not to share management personnel, by the retention of the independence of the staff of each and by the assurance that the general directors or editors of each would continue to be independent and authorized to make routine decisions.

Commission Concerns:

- the cross-ownership of broadcasting media and print media in the same market

Mitigating Circumstances:

- the need of financial rescue of an undertaking to ensure its continued performance

Measures Imposed:

- requirements for the separation of the news function, physically and/or editorially;
- requirements for the separation of programming departments and programming management with decision-making power;
- limitations on participation on respective corporate boards; and
- the application of a code of professional conduct to ensure editorial independence in situations of cross-ownership of media

DECISION CRTC 2000-221

In Decision CRTC 2000-221, 6 July 2000 (Decision 2000-221), the Commission approved the transfer of ownership of various interests of WIC Western International Communications Ltd. (WIC), including CHAN-TV Vancouver, CHEK-TV Victoria and CHCH-TV Hamilton, to CanWest Global Communications Corp. (Global).

Approval of the application raised the need for exceptions to the Commission's common ownership policy in that the contours of CIII-TV, Global's Ontario regional service overlapped those of CHCH-TV, as did those of CHAN-TV and CHEK-TV in the Vancouver-Victoria market, stations in British Columbia which had already been under the common ownership of WIC and of previous owners since 1963.

Before weighing its concerns with respect to the effect of its approval on the diversity of voices, particularly editorial voices, and on the presence of competition in both the Vancouver-Victoria and the Toronto-Hamilton markets, against the benefits of Global's proposals, the Commission emphasized that such concerns are often mitigated in large markets, such as Toronto and Vancouver, by the presence of a large number of broadcasting outlets, newspapers, magazines and other sources. It also considered in its assessment the importance of the historical interdependence of CHEK-TV and CHAN-TV as a consequence of the closely interconnected and operational links established between the two stations over years of common ownership.

The Commission stressed in Decision 2000-221 that there was, at the time, relatively little on either CHEK-TV or CHCH-TV oriented to Victoria or Hamilton. It therefore considered important, in considering whether to grant exceptions to its policy, that Global had made commitments to provide diversity in Victoria and Hamilton by ensuring that the services provided by CHEK-TV and CHCH-TV remain distinctive and clearly distinguishable from those provided by CHAN-TV in Vancouver and CIII-TV in Ontario respectively.

The Commission considered as well, in Decision 2000-221, that the continued viability of CHEK-TV would be in question, in the absence of Global's financial proposal, given the licence recently granted to CHUM Limited to establish a new television station in Victoria. It considered, in the same vein, that the economic stability of CHCH-TV as a stand-alone, independent local station would be ensured by Global as its new owner, given its commitments.

Global's request for exceptions was based in large part on a strategic plan for CHCH-TV and CHEK-TV focused on the reintroduction of a strong local orientation long absent from the stations' programming, in particular a substantial increase in the amount of local programming. The plan included commitments to minimum levels of local news and non-news programming, to non-duplication of priority programming on the sister stations, to a general limit on the duplication of programming on the respective sister antennae in each case and to the separation of the management of news and of programming in general in the two markets.

The Commission stated that it was satisfied that the commitments made by Global, some of them imposed as conditions of licence, would lead to the re-establishment of CHCH-TV

and CHEK-TV as viable, distinct and distinctively local stations and that, in the circumstances of those markets, exceptions to the common ownership policy were justified. It added expressly that Global's plans for the local orientation of CHCH-TV Hamilton and CHEK-TV Victoria, distinct from the service offered by CIII-TV Ontario and CHAN-TV Vancouver had figured prominently in its decision to permit exceptions to its common ownership policy. It concluded that, on balance, this outcome, coupled with appropriate safeguards and programming commitments to minimize the potential for undue competitive advantage and to increase diversity outweighed policy concerns associated with common ownership.

The Commission, however, made its approval conditional on the divestiture of CKVU-TV Vancouver, owned by Global, to an independent third party, within four months of its decision.

Common Ownership Policy:

- two television stations in the same language in the same market

Commission Concerns:

- the increase for one party in overall media influence in a particular market that would result from the transaction

Mitigating Circumstances:

- the longstanding common ownership of two undertakings, contrary to the Commission's common ownership policy and the impact of their separation;
- the need of financial rescue of an undertaking to ensure its continued performance; and
- the existing level of overall media competition in the relevant market;

Measures Imposed:

- requirements for the separation of the news function, physically and/or editorially; and
- requirements for the separation of programming departments and programming management with decision-making power
- requirements with regard to local programming and program duplication

DECISION CRTC 2000-747

Decision CRTC 2000-747, 7 December 2000 (Decision 2000-747), transferred effective control of CTV Inc. (CTV) to BCE Inc. (BCE). CTV Inc. owned CTV Television Inc., licensee of several television stations across Canada and owner of interests in a large number of licensed pay and specialty services, including CTV Newsnet and the Sports Network.

BCE, Canada's largest telecommunications company, was the provider, among other services, of telephone, both business and residential, of satellite communications, of Internet access and of high-speed data transfer. It was also the licensee of various satellite and terrestrial distribution undertakings (BDUs), in particular Bell ExpressVu, a satellite direct-to-home BDU.

The CTV-BCE transaction thus raised important issues of cross-ownership, of vertical integration, and of anti-competitive behaviour, given the merger of the activities of two leaders in their respective industry sectors.

In assessing whether the proposed merger was in the public interest, in Decision 2000-747, the Commission focused on whether the transaction gave rise to unresolvable concerns about gatekeeping, undue preference or other anti-competitive practices associated with cross-ownership in general, and vertical integration of programming and distribution services in particular. It also examined whether such concerns outweighed the benefits of the increased efficiencies, new synergies and greater investment in Canadian program production, in this case an increase of over \$200,000 million that could result from consolidation.

The Commission noted, in Decision 2000-747, that, in its 1995 Information Highway Report, it had described the convergence of telecommunications companies with broadcasting companies as an acceptable means of increasing diversity through an increased pool of program funding, to the benefit of Canadian audiences, the Canadian broadcasting system and the public interest.

The potential anti-competitive practices raised that could result from BCE's increased size and influence included an unfair advantage over competitors through: the ability to bundle complementary services such as telephone, Internet access, broadcast programming and multi-media content; undue purchasing power in the acquisition of foreign programming, to the detriment of the broadcasting system; and the ability to discriminate against non-affiliated content providers seeking access to BCE's Internet portal or to the distribution platforms it controlled.

The Commission considered, in Decision 2000-747, that its existing regime of safeguards, coupled with BCE's firm commitment not to engage in anti-competitive practices were sufficient to allay any concern raised with regard to cross-ownership of telecommunications and broadcasting activities. It was satisfied that the rules governing telephone companies already in place addressed such concerns, particularly: the requirement to unbundle the essential services required by competitors; the requirement for prior approval and the application of an imputation test for any bundle that includes a telecommunications service;

and sections 24 and 27(2) of the *Telecommunications Act* prohibiting anti-competitive behaviour with respect to pricing.

With regard to the potential for the gatekeeping and the undue preference that could flow from BCE's ownership interests in both broadcast programming and broadcast distribution, the Commission pointed to the undue preference provisions it had already established in the regulations applicable to BDUs and to programming services. It also required BCE to adhere to its commitment to develop and implement a code of conduct applicable to BCE's BDUs with respect to distribution, packaging and pricing of specialty services, to be submitted to the Commission for approval, and to BCE's commitment to include a 'most favoured nation' clause provision in all future affiliation contracts and renewal of contracts between its BDUs and program suppliers and to grant reciprocal rights to third-party audits of such contracts.

The Commission noted, as well, in Decision 2000-747, that Bell ExpressVu was not a dominant player in the distribution market with, at that time, 570,000 or 5% of all BDU subscribers.

Issues of cross-ownership of media were also raised by the CTV-BCE transaction by BCE's known plans to purchase the newspaper assets of Thomson Canada Limited and the potential that would arise therefrom for a reduction in the diversity of editorial voices. The Commission noted, in Decision 2000-747, those similar concerns were also raised by the recent sale by Hollinger Inc., of certain Canadian daily newspapers to CanWest Global Communications Corp. (Global) and the proposed purchase of the TVA television network (TVA) by the newspaper publisher Quebecor inc. The Commission decided that it would consider these questions in the upcoming renewal hearings of CTV and Global and of the transfer and renewal of TVA. It referred, in that context, to the code of professional conduct ensuring the separation of the newsroom of TQS from those of Quebecor's newspapers already imposed on TQS in Decision CRTC 97-482, 22 August 1997.

Commission Concerns:

- the vertical integration of broadcast programming undertakings and distribution undertakings in the same market;
- the cross-ownership of broadcasting media and print media in the same market;
- the cross-ownership of broadcasting and telecommunications businesses in the same markets; and
- the increase for one party in overall media influence in a particular market, or the Canadian broadcasting system, that would result from a transaction

Measures Imposed:

- the presence of an access policy in situations of vertical integration of programming and distribution; and
- the existence of rules and regulations limiting the possibility of anti-competitive behaviour in situations of cross-ownership of broadcasting and telecommunications

Measures alluded to for next renewal:

- the imposition of limitations on participation on respective corporate boards; and
- a code of professional conduct to ensure editorial independence.

BROADCASTING DECISION CRTC 2003-205

In Broadcasting Decision CRTC 2003-205, 2 July 2003 (Decision 2003-205), the Commission denied an application by a company controlled by TVA Group Inc. (TVA) to acquire the assets of a number of Quebec radio stations held indirectly by Astral Media inc.

Decision 2003-205 described TVA as the largest private broadcasting company involved in the French-language conventional television sector in Quebec, with stations in Quebec's largest cities, as the holder of interests in analog and digital French-language specialty services, including Canal Nouvelles, and in a French-language pay television service. It described TVA's controlling shareholder, Quebecor Media Inc. (Quebecor) as the controlling shareholder of the largest cable distribution company in Quebec, Vidéotron ltée, as a major player in Quebec's newspaper and magazine sector, including dailies, and as the owner of an Internet portal and of the Archambault Group Inc., Quebec's leader in record distribution.

Concerns were expressed by the Commission that the addition of radio stations controlled by TVA in the Quebec media landscape would further intensify the situation of media cross-ownership in the hands of a single group.

The Commission noted, in Decision 2003-205, that TVA accounted for more than 47% of TV viewing hours among Francophones when conventional TV and analog and pay services are taken into consideration and that, with radio added, it would acquire more than 25% of viewing/listening hours for all private sector broadcasting in Francophone Quebec (including conventional TV, specialty services and radio).

The Commission noted as well that, in Montréal, Quebec and Saguenay, with approval of its application, TVA would hold a controlling interest in radio, TV, local newspapers, pay and specialty services and magazines, in addition to its presence through community-based TV on cable. It was concerned that this level of concentration would give TVA a position of influence that would reduce the diversity of voices in Quebec's media and affect the level of competition unduly, by giving TVA the potential for gatekeeping with respect to information and concentration of the advertising market, unless adequate safeguards were in place. The Commission expressed particular concern that, under TVA ownership, the newsrooms of the AM radio stations concerned would not be truly distinct from TVA's newsrooms, given that, according to TVA, the Code of Professional Conduct governing, by condition of licence, the separation of the television activities of TVA from those of its related newspapers would be limited to interaction between radio and newspapers and would not apply to the relationship between radio and television.

In weighing whether the possible benefits of approving the applications outweighed the concerns raised, and whether approval would be in the public interest, the Commission also noted that its main objective in assessing the applications, the revitalizing of AM radio in Quebec, would not likely be met by TVA's proposal, given the inadequacy of TVA's business plan and proposed investments for the radio stations concerned.

In particular, the Commission expressed concern that, in light of the absence of a clear plan for the revitalization of the radio stations it would acquire, their ownership by TVA could

eventually become nothing more than an additional promotion vehicle for Quebecor's other assets and could result in the standardization of information and in a decline in diversity.

The Commission concluded that TVA had not demonstrated to its satisfaction that the concerns over the concentration of ownership and media cross-ownership raised by the application were outweighed by the benefits of its proposal, particularly for the recovery of AM radio in Quebec, and that, therefore, its proposal would not benefit the broadcasting system as a whole and was not in the public interest.

Commission Concerns:

- the cross-ownership of broadcasting media and print media in the same market;
- the increase for one party in overall media influence in a particular market, and in the Canadian broadcasting system, that would result from the transaction; and
- the likelihood that the transaction would affect negatively the ability of the licensee to maintain existing broadcasting services and to discharge its obligations under the Act