Broadcasting Decision CRTC 2007-429

Ottawa, 20 December 2007

CanWest MediaWorks Inc., on behalf of Alliance Atlantis Broadcasting Inc.
Across Canada

Application 2007-0700-5, received 4 May 2007
Public Hearing in the National Capital Region
19 November 2007

Transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to CanWest MediaWorks Inc.

The Commission ***approves****, subject to certain conditions, an application for authority to transfer effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies, currently in trust, to CanWest MediaWorks Inc. through its subsidiary CW Media Inc.*

Introduction

1. The Commission received an application by CanWest MediaWorks Inc. (CanWest), on behalf of Alliance Atlantis Broadcasting Inc. (Alliance Atlantis), for authority to transfer effective control of Alliance Atlantis's broadcasting companies (the AA Companies), currently in trust, from the Trustee, Mr. James Macdonald (the Trustee), to CanWest through its subsidiary CW Media Inc.

Background

2. On 10 January 2007, CanWest Global Communications Corp. (CanWest Global) and GS Capital Partners (GSCP), a private equity affiliate of Goldman, Sachs & Co., announced that they had entered into an agreement with Alliance Atlantis Communications Inc. (AACI) to acquire all of its issued and outstanding shares at a cash price of $53.00 per share for an aggregate price (including regulated and non-regulated businesses) of approximately $2.3 billion.

3. The Commission announced on 25 May 2007 that two preliminary steps required in the examination of the transaction involving CanWest and Alliance Atlantis had been completed.

4. As a first step, the Commission approved, by letter of authority dated 24 May 2007, a corporate restructuring pursuant to a plan of arrangement aimed at separating the Alliance Atlantis businesses and operations that are subject to regulation by the Commission from those that are not.

5. As a second step, the Commission approved, by letter of authority dated 24 May 2007, the creation of a Voting Trust Agreement and the appointment of Mr. James B. Macdonald as Trustee to enable the continued operation of the affected broadcasting undertakings independently from CanWest pending the Commission's consideration of the current transaction. The Voting Trust Agreement involved the transfer of all of the issued and outstanding shares of the AA Companies, as well as Alliance Atlantis's partnership interest in the general partnership known as Historia and Séries+, s.e.n.c. By letter of authority dated 26 November 2007, the Commission approved an extension of this authorization until 31 March 2008.

The application

6. The proposed transfer of effective control would be effected through the transfer of all of the issued and outstanding shares of the AA Companies, currently in trust, to CW Media Inc.

7. CW Media Inc. would be owned by Canco, a corporation to be incorporated, in turn to be owned by CW Media Holdings Inc., which in turn would be owned by Specialty TV Holdco. Specialty TV Holdco would be owned by CW Investments Co. CanWest would hold 66 2/3% of the Class A Voting Preferred shares of CW Investments Co., while GSCP (a non-Canadian) and its affiliates would hold the remaining 33 1/3% of the Class A Voting Preferred shares thereof.

8. In addition, CanWest would hold 35% of the total equity of CW Investments Co., while GSCP would hold 65% of such total equity.

9. As a result of the transaction, effective control of Alliance Atlantis's 18 broadcasting specialty television services, 5 of which remain unlaunched, would be transferred to CW Media Inc. This transaction also includes the transfer of a minority interest in three other services and a 50% partnership interest in Historia and Séries+, s.e.n.c.

10. CanWest has ascribed a value to the regulated business involving Alliance Atlantis's broadcasting undertakings of $1.369 billion. The proposed tangible benefits package for these undertakings amounts to $136.9 million.

11. CanWest proposed that approximately 90% of the tangible benefits package ($123 million) be allocated to onscreen and programming initiatives and approximately 10% thereof ($13.9 million) be allocated to social benefits.

12. CanWest is obliged, pursuant to the terms of a Shareholders' Agreement, to merge its Canadian television business (the "Contributed Business") with the AA Companies in 2011, subject to any necessary regulatory approvals (the "Combination Transaction"). According to CanWest, this will be done on a debt-free and tax-efficient basis, excluding any tax liabilities related to the period prior to the combination date. The merger is expected to be completed during the second or third calendar quarter of 2011.

The proceeding

13. The Commission received written interventions in connection with this application, and numerous parties made oral presentations at the public hearing. The Commission has carefully reviewed and considered the submissions of all parties. The public record of this proceeding, which includes interventions in support of, in opposition to, and commenting on the application, is available on the Commission's Web site at www.crtc.gc.ca under "Public Proceedings."

14. The Commission has identified the following four issues to be addressed in its determinations:

- Would the relationship between CanWest and GSCP in the transaction result in the control of the AA Companies being exercised by a non-Canadian?
- Would CanWest be able to maintain the distinct and unique nature of the Alliance Atlantis specialty services given the proposed programming synergies and the amount of programming overlap that are likely to occur between its conventional stations and these specialty services?
- Is the proposed value of the transaction reasonable and acceptable? and
- Is the proposed tangible benefits package acceptable?

Would the relationship between CanWest and GSCP in the transaction result in the control of the AA Companies being exercised by a non-Canadian?

15. The Commission has authority under the *Broadcasting Act* (the Act) to regulate the broadcasting system in Canada to implement policy objectives, including the requirement that the Canadian broadcasting system shall be effectively owned and controlled by Canadians set out in subsection 3(1)(*a*) of the Act.

16. The Governor in Council has, by Order in Council P.C. 1997-486, *Direction to the CRTC (Ineligibility of Non-Canadians),* 8 April 1997 (the Direction), issued a direction to the Commission, pursuant to subsection 26(1) of the Act, respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted. Pursuant to the Direction, no broadcasting licence may be issued, and no amendment or renewals thereof may be granted, to an applicant that is a "non-Canadian." A "non-Canadian" is a person or entity that is not a "Canadian." A "Canadian" includes a "qualified corporation."

17. The Direction defines a "qualified corporation" as follows:

> A "qualified corporation" means a corporation incorporated or continued under the laws of Canada or a province, where:

(a) the chief executive officer or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and not less than 80 per cent of the directors are Canadians;

(b) in the case of a corporation having share capital, Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80 per cent of all the issued and outstanding voting shares of the corporation and not less than 80 per cent of the votes; and

(c) in the case of a corporation that is a subsidiary corporation,

(i) the parent corporation is incorporated or continued under the laws of Canada or a province,

(ii) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 66 2/3 per cent of all of the issued and outstanding voting shares of the parent corporation and not less then 66 2/3 per cent of the votes, and

(iii) the parent corporation or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation where:

(A) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, less than 80 per cent of all of the issued and outstanding voting shares of the parent corporation and less than 80 per cent of the votes,

(B) the chief executive officer of the parent corporation or, where the parent corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer is a non-Canadian, or

(C) less than 80 per cent of the directors of the parent corporation are Canadian.

18. The Direction also provides that, where the Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control, the applicant is deemed to be a non-Canadian. Therefore, where the Commission determines that a qualifying corporation that would otherwise be a “Canadian” for the purposes of the Direction is in fact controlled by a non-Canadian, the corporation shall be deemed to be a “non-Canadian.”

19. The Commission, in applying the Direction, therefore examines whether a non-Canadian can exercise:

a) de jure control (legal control); or
b) de facto control (control in fact).

Legal control

20. Under the current transaction proposal, each Regulated Entity (other than those in which AACI held a minority interest) would be wholly-owned and controlled by CW Investments Co. through intermediary corporations and would therefore be a "subsidiary corporation" within the meaning of the Direction. Accordingly, in order to be a "qualified corporation," each Regulated Entity must satisfy the test set out in subparagraph *(a)*, and CW Investments Co. as a parent corporation must satisfy the test set out in subparagraph *(c)* of the definition of "qualified corporation" found in the Direction.

21. Based on the information filed with the application, the Commission considers that the chief executive officer and not less than 80% of the directors of each Regulated Entity would be Canadian. Accordingly, the Commission is of the view that the requirements in subparagraph *(a)* of the definition of "qualified corporation" have been met.

22. With respect to the tests applicable to a parent corporation in subparagraph *(c)* of the definition of "qualified corporation," the Commission considers that

- the requirement in subparagraph *(i)* is satisfied;

- the requirement in subparagraph *(ii)* is satisfied because 66 2/3% of the voting shares of CW Investments Co. will be beneficially owned and controlled by CanWest, a Canadian; and

- the requirement in subparagraph *(iii)* is satisfied because while the non-Canadian GSCP will hold in excess of 20% of the voting shares of CW Investments Co., the Parties have proposed that an Independent Programming Committee be established in respect of the AA Companies.

23. Accordingly, the following section will focus on the de facto control analysis mandated by section 3 of the Direction, which relates to the control of a regulated entity by a non-Canadian "on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control."

Control in fact

24. The Commission considers that the appropriate test for assessing de facto control was set out in Decision No. 297-A-1993 (the Canadian Airlines decision) of the National Transportation Agency (the NTA). In that decision, the NTA found that control in fact generally can be viewed as the ongoing power or ability, whether exercised or not, to determine the strategic decision-making activities of an enterprise. It can also be viewed as the ability to manage and run the day-to-day operations of an enterprise.

25. In examining whether the participation of GSCP constitutes control in fact, the Commission has considered a number of agreements and in particular the Shareholders' Agreement and the Management and Administrative Services Agreement. The Commission considers that the following issues are relevant to a de facto control analysis of the proposed transaction:

- the composition and mandate of the Board of Directors of CW Investments Co. and its subsidiaries;
- the composition and mandate of the Reporting Committee established pursuant to the Shareholders' Agreement;
- the structure of the Independent Programming Committee;
- the relative levels of economic participation of CanWest and GSCP in CW Investments Co.;
- the nature of the veto rights granted to GSCP pursuant to the Shareholders' Agreement;
- the liquidity rights; and
- the impact of CW Media Holdings Inc.'s financing arrangements on the control of the AA Companies.

Composition and mandate of the Board of Directors

26. The Shareholders' Agreement filed with the application provided that the Board of Directors of CW Investments Co. shall consist of five directors, each of whom shall be qualified to serve as a director in accordance with the *Companies Act* (Nova Scotia) and applicable CRTC regulations. Under the terms of the Shareholders' Agreement, CanWest is entitled to appoint three of the directors, and GSCP is entitled to appoint two of the directors.

27. Pursuant to the Shareholders' Agreement, each nominee of CanWest shall be a Canadian citizen ordinarily resident in Canada. One nominee of GSCP may be a non-Canadian.

28. As originally filed with the Commission, the Shareholders' Agreement provided that a quorum for a Board meeting was a simple majority of the directors. This provision could have permitted a valid Board meeting to be held where the GSCP nominees constituted a majority of the directors present.

29. In response to concerns raised by the Commission, CanWest proposed at the hearing to amend the Shareholders' Agreement to require that CanWest's nominees represent the majority of Board members present in order for there to be a quorum. The Commission considers this proposal to be appropriate. The Commission therefore directs CanWest, as a **condition of approval**, to file with the Commission within 45 days of the date of this decision an executed Shareholders' Agreement that includes the amended language relating to the quorum for any Board of Directors' meeting.

30. The Commission notes that CanWest has stated that the board of CW Media Inc. and all of the other intermediary corporations would be composed of the same members as the CW Investments Co. Board. The Commission considers that this commitment should be formalized in the constituting documents of the intermediary corporations. The Commission further considers that the boards of the intermediary corporations should be subject to the same requirements as to quorum as the CW Investments Co. Board. The Commission therefore directs CanWest, as a **condition of approval**, to file with the Commission, within 45 days of the date of this decision, amended executed constituting documents for the intermediary corporations that include the requirement that the boards of CW Media Inc. and all of the other intermediary corporations be composed of the same members and subject to the same quorum requirements as the CW Investments Co. Board.

Composition and mandate of the Reporting Committee

31. The Shareholders' Agreement originally proposed that a Reporting Committee be created in order to gather information on CanWest's management of the AA Companies and the Contributed Business.

32. The Commission was not satisfied with the proposed Reporting Committee structure. The Shareholders' Agreement contained no provisions regarding record-keeping, quorum or scheduling of meetings of the Reporting Committee. In addition, the Commission considered that it was clear that the parties would use the Reporting Committee as a de facto Executive Committee where key decisions with respect to both the AA Companies and the Contributed Business would be made. At the hearing, the Commission insisted that the Shareholders' Agreement should be amended to include provisions that would address these concerns.

33. In response to these concerns, CanWest proposed at the hearing to add a schedule to the Shareholders'Agreement that sets out provisions governing record-keeping, quorum and the scheduling of meetings. CanWest also included in this proposed schedule a provision which provides that the Reporting Committee shall have no authority or right to make any decisions with respect to the AA Companies and/or the Contributed Business.

34. The Commission finds that the new provisions regarding record-keeping, quorum and the scheduling of meetings will increase the transparency of the Reporting Committee process. The Commission further finds that the addition of the explicit prohibition on the Reporting Committee's making any decisions with respect to the AA Companies and/or the Contributed Business will ensure that all decisions relating to the AA Companies and/or the Contributed Business will be made at the appropriate corporate level under the provisions of the Shareholders' Agreement. The Commission considers that in addition to CanWest's proposals, the Reporting Committee should be structured so that at least 80% of its members are Canadians. The Commission directs CanWest, as a **condition of approval**, to file with the Commission, within 45 days of the date of this decision, an amended executed Shareholders' Agreement which includes the schedule governing the Reporting Committee as proposed by CanWest with the additional requirement that at least 80% of its members be Canadians.

Composition and mandate of the Independent Programming Committee

35. On the basis that GSCP will have over 20% of the voting shares and of the Directors on the Board of CW Investments Co., CanWest had proposed an Independent Programming Committee (the IP Committee).

36. In response to concerns raised by the Commission with respect to its proposed IP Committee, including concerns relating to the control exercised by the IP Committee over the programming budget, CanWest at the hearing proposed a revised Unanimous Shareholders' Declaration regarding the IP Committee that addressed the Commission's concerns. The provisions in the revised Unanimous Shareholders' Agreement contained the following definition of "programming decisions":

> "programming decisions" means all decisions of any kind relating to or affecting television programming broadcast by the Corporation and its Subsidiaries and includes all decisions relating to the content and presentation of the programming of the Corporation and its Subsidiaries, including all decisions relating to the funding of programming and the allocation of programming funds within the budget approved by the board.

37. The Commission is satisfied with the proposed amendments with respect to the creation of the IP Committee and the maintenance of such a committee in the revised Unanimous Shareholders' Declaration.

38. However, the Commission notes that no termination provision has been included in the proposed IP Committee Declaration.

39. The Commission finds that such a provision should be included and directs CanWest to file an amended IP Committee Declaration to add a termination provision that reads as follows:

> This declaration cannot be revoked or amended without the prior approval of the CRTC for so long as one or more of the conditions set out in section (*c*)(iii) of the *Direction to the CRTC (Ineligibility of Non-Canadians)* is occurring.

40. The Commission therefore directs CanWest, as a **condition of approval**, to file with the Commission, within 45 days of the date of this decision, an executed Unanimous Shareholders' Declaration containing the revised wording proposed by CanWest at the hearing and the wording regarding the termination provision set out above.

Level of economic participation of CanWest and GSCP in CW Investments Co.

41. A number of interveners have raised concerns that the level of GSCP's economic participation in this transaction would provide it with de facto strategic control of the AA Companies. These concerns appear to be based on GSCP's holding more than 50% of the equity in CW Investments Co. prior to the Combination Transaction.

42. The Commission notes, however, that even prior to the Combination Transaction, CanWest will operate both the AA Companies and the Contributed Business as one business. Therefore, CanWest's de facto contribution to this transaction is 35% of the equity in the AA Companies plus the value of the Contributed Business. The Commission asked for and received from CanWest a confidential third-party valuation of the Contributed Business. Taking CanWest's equity share in the AA Companies and the Contributed Business together (using the confidential valuation referred to above), CanWest's share of the equity in the venture will be more than 50%. Looking at matters in this light, the Commission finds no merit in the argument that GSCP's equity position will give them control in fact.

GSCP veto rights

43. The Shareholders' Agreement as proposed provided GSCP with a number of veto rights over the out of the ordinary course transactions of the AA Companies and the Contributed Business and the acquisition of material liabilities. The Commission raised a number of concerns with the applicant regarding these veto rights, including concerns over the definitions of "ordinary course of business" and "material liability," the requirement that each director nominated by GSCP approve any transaction subject to a veto, and the threshold amounts on out of the ordinary course transactions above which GSCP would have a veto right.

44. At the hearing, CanWest submitted that no definitions of "ordinary course of business" or "material liability" were required. It was CanWest's position that the parties would recognize such situations when they occurred. The Commission found this explanation to be unsatisfactory and insisted that CanWest provide definitions of such terms. In response, CanWest filed the following definitions:

"ordinary course of business" means the ordinary course of the business of the Corporation and its Subsidiaries or the Contributed Business, as the case may be, including with respect to the Corporation and its Subsidiaries, the operation of specialty television channels and ancillary businesses related thereto (including new media related thereto), and with respect to the Contributed Business, the operation of conventional television and specialty television channels and ancillary businesses related thereto (including new media related thereto), including the acquisition, production, licensing, sale and exhibition of programming, sale and exhibition of advertising, dealings with broadcast distribution undertakings and capital spending, in connection with each of the foregoing, but excluding the acquisition of, investment in or disposition of businesses, channels or stations.

"material liability" means for the purposes of sections 4.7(b)(vi) and 5.5(e) a liability that is, or is reasonably expected to be, material and adverse to the business, operations, results of operations, obligations, capital, properties, assets or financial condition of the Corporation and its Subsidiaries or the Contributed Business, as the case may be, taken as a whole.

45. CanWest also proposed at the hearing to amend the Shareholders' Agreement to allow the GSCP veto rights to be waived by one rather than by both GSCP-nominated directors.

46. The Commission is satisfied with the new definitions proposed by CanWest for "ordinary course of business" and "material liability," as well as the proposed amendment to the Shareholders' Agreement which would allow the GSCP veto rights to be waived by one GSCP-nominated director.

47. With respect to the threshold amounts, CanWest proposed at the hearing to amend the threshold amounts as follows:

Pre-Combination:

- Out of the ordinary course transactions – $30 million
- Sale or acquisition of a television channel – $20 million

Post-Combination:

- Out of the ordinary course transactions – $45 million
- Sale or acquisition of a television channel – $20 million

48. However, despite the amendments to the threshold amounts proposed by CanWest, the Commission remains concerned that these amounts have been set too low post the Combination Transaction and as such create a risk that GSCP could exercise an undue amount of influence over some strategic decisions. The Commission believes that these thresholds should be set sufficiently high so as to remove the possibility of undue influence by GSCP over strategic decisions. As such, the Commission considers that all threshold amounts in the Shareholders' Agreement should be set as follows:

Pre-Combination:

- Out of the ordinary course transactions – $30 million
- Sale or acquisition of a television channel – $20 million

Post-Combination:

- Out of the ordinary course transactions – 5% of the value of the broadcasting undertakings valued as of the date of the Combination Transaction
- Sale or acquisition of a television channel – $30 million

49. The Commission therefore directs CanWest, as a **condition of approval**, to file with the Commission, within 45 days of the date of this decision, an executed Shareholders' Agreement which contains the new definitions of "ordinary course of business," "material liability," the new provisions regarding the ability of one GSCP-nominated director to waive the GSCP veto rights, and the new threshold amounts as set out above.

Liquidity rights

50. The Shareholders' Agreement contains a number of mechanisms to allow the parties to dispose of or transfer their shares in the venture. Such mechanisms include CanWest Call Rights, GSCP Put Rights, and GSCP Sale and Registration Rights.

51. The Commission has reviewed the proposed liquidity rights in the Shareholders' Agreement. The Commission is satisfied that these mechanisms are standard minority shareholder rights/protections in narrowly held private corporations and as such are consistent with the role of GSCP as only a financial investor as described by CanWest and GSCP at the hearing. The Commission is therefore satisfied that these rights will not provide GSCP with additional leverage such that GSCP could exercise de facto control of the venture.

Impact of CW Media Holdings Inc.'s financing arrangements

52. The Commission was concerned that if a Goldman, Sachs & Co. entity was the lead syndicator with respect to the debt, or if it were the major debt holder under any of the lending agreements, this together with GSCP's equity interest could result in undue influence over the venture by a non-Canadian. However, in light of the evidence provided by CanWest which clearly shows that Goldman, Sachs & Co. is not the lead syndicator and is a relatively minor debt holder rather than the single largest debt holder, the Commission considers that its concerns in this area have been satisfied.

Conclusion

53. In light of all of the above, the Commission is satisfied that, subject to the amendments outlined above, the proposed transaction does not raise any de facto control concerns. The Commission therefore directs CanWest, as a **condition of approval**, to file amended documents reflecting the changes set out above within 45 days of the date of this decision.

Would CanWest be able to maintain the distinct and unique nature of the Alliance Atlantis specialty services given the proposed programming synergies and the amount of programming overlap that are likely to occur between the conventional stations and these specialty services?

54. CanWest stated in its application that the transaction would allow it to extend viewing opportunities to high-quality Canadian programming between conventional stations and the specialty networks of Alliance Atlantis as other broadcasters with conventional and specialty holdings have been able to do. CanWest also indicated that its programming strategy will be focused on maximizing audiences for Canadian programming.

55. CanWest further stated that it envisioned opportunities to extend some of the programming from the Alliance Atlantis specialty services to conventional television and other platforms and to extend Canadian drama from Global TV and E! to specialty services such as Showcase and History. However, CanWest affirmed that each of the specialty services being acquired will continue to operate within their specific programming niches/genres as per their licences.

56. The Commission recognizes that synergies in the area of programming are one of the expected and desired outcomes of such transactions for the purchasing entity and notes CanWest's assurances regarding the acquired specialty services. However, the Commission reminds CanWest that it must adhere to the nature of service conditions of licence for those specialty services, as well as to the other obligations associated with those services.

Is the proposed value of the transaction reasonable and acceptable?

57. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the benefits proposed in the application are commensurate with the size and nature of the transaction. The Commission generally expects applicants to make commitments to clear and unequivocal benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission for television undertakings in Public Notice 1999-97 (the 1999 Television Policy) and maintained in Broadcasting Public Notice 2007-53.

58. Based on a valuation report prepared by Ernst & Young, CanWest determined a value of $1.427 billion for both the regulated and non-regulated assets that they would obtain as a result of this transaction. As this amount includes a value of $57.375 million attributed to the non-regulated assets, CanWest determined the value of the transaction for the regulated broadcasting assets as $1.369 billion, for which they proposed a tangible benefits package in the amount of $136.9 million. This value was determined on 31 December 2006, immediately prior to the transaction being announced on 10 January 2007.

59. Normally, for the purpose of determining the value of a transaction, the Commission accepts either the date of the transaction or the closing date where the dates are relatively close together and do not impact the value of the transaction. Accordingly, as the closing in this case occurred on 15 August 2007, a significant period of time after CanWest's valuation was undertaken, the Commission has determined that the value of the transaction should be determined based on the value of the regulated broadcasting assets on 15 August 2007.

60. In this regard, CanWest provided updated information on the purchase price and the purchase price allocation based on that closing date. The Commission has based its value of the transaction in part on this information, which includes the price paid for the outstanding Alliance Atlantis shares and the subsequent allocation of the purchase price between the specialty television division on the one hand and the movie distribution income fund and the entertainment division on the other. The allocation also includes Alliance Atlantis's outstanding debt and cash on hand related to each of the specialty television and entertainment divisions.

61. CanWest stated that they allocated 57.5% of the purchase price, including net debt, to the specialty television services they are acquiring. The remaining 42.5% of the purchase price was allocated to the movie distribution income fund and the entertainment division.

62. As requested at the hearing, CanWest also filed information detailing the value of the debt that it would be assuming at closing. In audited financial statements entitled *Broadcasting Group of Alliance Atlantis Communications Inc. Combined Consolidated Financial Statements For the Years Ended Dec. 31 2006, 2005 and 2004*, which present the specialty services as if they had been operated on a stand-alone basis (the carved-out financial statements), 100% of this debt was allocated to specialty services. As it is the Commission's practice to include in the value of the transaction all of the assumed debt, the Commission has included 100% of the debt as at 15 August 2007, or $304.719 million, in the value of the transaction.

63. In determining the assumed debt, however, the amount of cash available to service that debt is to be deducted to arrive at the net debt assumed. In this regard, the Commission has determined that on 31 December 2006, cash allocated to specialty services in the carved-out financial statements represented 64.6% of the consolidated cash for both the specialty and entertainment divisions. Consequently, the Commission has deducted 64.6% of the $113.134 million of Alliance Atlantis's cash on hand at 15 August 2007. This represents $73.085 million that is being deducted from the value of the transaction to properly reflect the value of the net debt assumed.

64. In addition to including the value of the assumed debt, the Commission's practice is also to consider both assumed capital and operating leases as debt financing alternatives and, as such, include them in the value of the transaction. The carved-out financial statements disclose an amount of $2.446 million for capital leases on 31 December 2006. As the Commission considers the $2.446 million to be a reasonable estimate of the value of the assumed capital lease obligation as at 15 August 2007, this amount is being included in the value of the transaction.

65. With regard to the operating leases, the Commission has determined from the additional information filed by CanWest following the hearing that the undiscounted future operating lease commitments, excluding future operating costs, amount to $42.540 million. The Commission has included this amount in its determination of the value of the transaction.

66. The Commission does not require benefits to be paid on non-regulated assets. The purchase price allocation filed by CanWest includes a reduction in the amount of $57.375 million in the value of the transaction to reflect these assets.

67. In their valuation of these assets, Ernst & Young included in non-regulated assets the equity investment in three broadcast undertakings: One, Scream and The Score. As this investment would not be subject to the benefit requirement if the undertakings were sold on a stand-alone basis, the Commission accepts their inclusion as non-regulated assets.

68. The Commission determined the value for One and Scream using data provided by Ernst & Young. Its calculation included revenue and earnings before interest, taxes, depreciation and amortization (EBITDA) multiples. Revenue multiples are generally used only for unprofitable operations. Since these undertakings are profitable, the Commission applied Ernst & Young's calculation but used only the EBITDA multiple. This adjustment results in a reduction in the value attributed to these two non-regulated assets from $3.584 million to $1.623 million.

69. Ernst & Young determined the value for The Score based on its publicly traded share price. It indicated that between the valuation date of 31 December 2006 and the 30 April 2007 date of its valuation report, the value of each share increased $0.93, resulting in the value of the investment increasing by $20 million. In the past, for purposes of determining of the value of the transaction, the Commission has used the value of the shares based on their weighted average price over a reasonable period of time surrounding the closing date of the transaction. As the weighted average for one share of The Score over the period from 13 to 17 August 2007 was $1.75, the increase in value proportionate to the one outlined by Ernst & Young would result in an increase in The Score's value of $14.6 million. This adjustment to the value of The Score increases the reduction to the value of the transaction on account of the equity investment in One, Scream and The Score from the $26.587 million as set out in the Ernst & Young report to $39.250 million, representing $1.623 million for One and Scream plus $37.627 million for The Score.

70. Ernst & Young allocated the total value of shared fixed assets to non-regulated assets. As these assets are also related to corporate services provided to the specialty services, it would be unreasonable to allocate their entire cost to the non-regulated operations, which represent a small portion of total operations. In this regard, the Commission has allocated the value of the shared fixed assets to non-regulated activities in the same proportion as Ernst & Young allocated shared services between regulated and non-regulated assets in its valuation report. This adjustment to the allocation of shared fixed assets to non-regulated activities reduces the reduction to the value of the transaction from the $20.107 million set out in the Ernst & Young report to $2.794 million.

71. The Commission accepts Ernst & Young's value for shared services, interactive operations and other net assets as set out in its report.

72. Appendix 2 to this decision provides the CanWest value adjusted to reflect the allocation of assumed net debt, capital and operating leases, and the adjustments to the allocations to non-regulated assets for a revised value of the transaction of $1.513 billion (rounded).

Is the proposed tangible benefits package acceptable?

73. As stipulated in the 1999 Television Policy, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of a transaction, as accepted by the Commission. Such benefits should be directed to the communities served and to the broadcasting system as a whole.

74. CanWest proposed a tangible benefits package of $136.9 million. Approximately 90% thereof ($123 million) would be allocated to programming benefits and 10% ($13.9 million) to social benefits. This spending would be incremental to existing requirements, including all outstanding spending obligations associated with previous ownership transactions.

75. With the exception of the *Provision of Completion Financing for Independent Documentary Production* and the *Creation of a $1 Million Documentary Development Fund* initiatives ($4 million), CanWest proposed to self-administer all remaining onscreen and programming related benefits. CanWest argued that this approach would provide content creators with a "one stop shopping" opportunity for financing and development support, a position it reiterated in response to interventions and to questioning at the hearing.

76. The Commission considers that the model used to administer and apportion the tangible benefits to incremental programming initiatives (approximately 90%) and social benefits (approximately 10%) is appropriate and consistent with past practice. CanWest is reminded that the Commission considers that it is inappropriate for any administrative fees to be charged when approval has been given to a licensee to self-administer benefits spending. Accordingly, no administrative fees may be charged by CanWest.

77. However, the tangible benefits package does raise some issues that are addressed in the following paragraphs.

Extending certain tangible benefits over a ten-year period

78. CanWest proposed that a number of its programming benefits, specifically those related to the independent production community (priority programming) and other programming initiatives, be spread over a ten-year period rather than the typical five- or seven-year period. In its application and in response to the interventions and to questioning at the hearing, CanWest argued that a ten-year period would allow the potential of the benefit dollars to be maximized and help ensure a "sustainable production community."

79. During the hearing, in response to questioning from the Commission, the applicant reiterated that it had adopted a "cradle-to-grave approach" and looked "forward to the opportunity to following the creative process […] to take the time to pilot, and then green light, and then be sure that [it has] the right timelines to allow [it] to market and promote [the resulting programming] properly."

80. Though the Commission appreciates that the creative process is dynamic and difficult to predict, it notes that tangible benefit packages in the past have been managed successfully within the five- and seven-year periods. The Commission is not convinced that the advantages CanWest claims would result from a ten-year period are sufficient to warrant a deviation from the accepted five- or seven-year norms.

81. Accordingly, the Commission requires CanWest to discharge the tangible benefits associated with this transaction within a seven-year period beginning on the date of this decision. The Commission therefore directs CanWest, as a **condition of approval**, to file with the Commission, within 45 days of the date of this decision, a plan for discharging all of the tangible benefits associated with this transaction within a seven-year period beginning on the date of this decision. Furthermore, the Commission expects the tangible benefits to be expended in a timely manner. The Commission recognizes that in the first year following Commission approval of a transaction, there is typically a transition period within which it may be difficult to organize initiatives, including those related to tangible benefits. Therefore, the Commission encourages CanWest to expend as much of the tangible benefits as is reasonable in the first year and expects that the remaining balance following that first year will be expended equally over the last six years. These amounts should be reported in the annual report, the details for which are described later in this decision.

82. As noted earlier, the Commission appreciates the dynamic nature of the creative process, so in each year excluding the first and final years, CanWest may expend an amount that is up to five percent (5%) less than the minimum scheduled expenditure for that year as calculated after the first year. In such a case, CanWest must expend in the next year, in addition to the minimum required expenditure for that year, the full amount of the previous year's underexpenditure.

83. Where CanWest expends an amount that is greater than the minimum scheduled expenditure for that year as calculated after the first year, it may deduct:

(i) from the minimum required expenditure for the next year, an amount not exceeding the amount of the previous year's overexpenditure; and

(ii) from the minimum required expenditure for any subsequent year, an amount not exceeding the difference between the overexpenditure and any amount deducted under (i) above.

Programming benefits

84. CanWest proposed programming benefits valued at $123 million, which it characterized as its On-Screen and Programming benefits. CanWest identified the following four broad envelopes, within which specific initiatives were identified:

- Scripted Drama and Other Priority Programming ($81.5 million);
- Expansion of Documentary Production ($9 million);

- Supporting a Growing Canadian Star System ($13.5 million); and

- News and Public Affairs ($19 million).

85. In response to interventions, CanWest made the following commitments related to the programming benefits:

- All of the programming resulting from the benefits would be produced by independent/non-affiliated production companies,[1] except for the following two initiatives:

    - *Celebrating Canada's Best: Award Shows/Red Carpet Tributes to Canadian Talent* ($13.5 million); and

    - *Canada in Focus* ($4 million).

  CanWest clarified that the *Expansion of International News Bureaus* initiative ($10 million) and the *Digitizing Archival Footage* initiative ($5 million) were not included in the calculations as neither initiative would involve a production company, affiliated or non-affiliated.

- All funds associated with its *Third party promotion of priority programming on non-television media* initiative ($4 million) would be associated with programming provided by independent production companies.

- With the exception of the *Canada in Focus* initiative ($4 million), all of the other on screen productions designed for broadcast would air first on one or more of the Alliance Atlantis services and would be consistent with the nature of service of at least one Alliance Atlantis specialty service.

- With regards to the *Pilot projects for scripted drama programming* initiative ($13.5 million), 100% of the funds would be devoted to scripted drama programming. In addition, as per standard industry practice, if CanWest passed on a project and another broadcaster picked up the option, CanWest would expect to be reimbursed for the script and development funding and would reinvest the reimbursed funds.

- With regards to the *Scripted drama production* initiative ($55 million), 60% of the funds would be allocated to 10-point scripted drama productions, with the remaining 40% allocated to scripted drama productions earning less than 10-point certification. At the hearing, CanWest indicated that it intended to include 6-point scripted drama productions within this 40%.

[1] The Commission defines independent/non-affiliated production companies as production companies in which the licensee or any of its shareholders owns or controls, directly or indirectly, less than 30% of the equity.

86. Overall, the Commission deems that the programming benefits, as modified by CanWest in response to interventions, are acceptable, with the exception of the three issues discussed below.

87. Regarding CanWest's commitment that all programming resulting from the benefits would be produced by independent/non-affiliated production companies, with the exception of the two initiatives it identified, the Commission is of the opinion that in this instance, it is appropriate that this commitment be formalized into a condition of licence to provide the independent production community with a greater degree of transparency and predictability. Therefore, the Commission, as a **condition of approval**, directs CanWest to file with the Commission, within 45 days of the date of this decision, applications to add a condition of licence to this effect for the CanWest over-the-air services and the Alliance Atlantis services.

88. With respect to the *Scripted drama production* initiative ($55 million), the Commission concurs with CanWest that flexibility regarding the support for non-10-point scripted drama programming is appropriate. However, the Commission is of the view that this programming, which could account for as much as 40% of this initiative, should be at a minimum 8-point scripted drama programming and that the support of scripted drama programming below the 8-point threshold would not be appropriate. Furthermore, the Commission clarifies that it considers the 60% allocated to the support of 10-point scripted drama programming as a minimum and the 40% allocated to the support of non-10-point scripted drama programming as a maximum.

89. With respect to CanWest's proposed $5 million *Digitizing archival footage* initiative, CanWest argued in its application that it would not undertake this initiative in the normal course of business and noted that the Commission approved a similar initiative as a tangible benefit in Decision 2000-747.

90. The Commission notes, however, that the decision cited by CanWest is almost seven years old, that technology and the communications environment has evolved dramatically in the intervening years, and that what was once considered new and cutting edge is now considered the normal course of business. In the case of the *Digitizing archival footage* initiative ($5 million), the Commission finds that the applicant failed to provide sufficient evidence that might have enabled the Commission to qualify this expenditure as an unequivocal benefit.

91. Therefore, the proposed *Digitizing archival footage* initiative ($5 million) is disqualified as a benefit under the Commission's policy. Nevertheless, the Commission wishes to ensure that the value of the package of acceptable tangible benefits that will be realized as a consequence of its approval of this transaction remains at least at the level proposed in the application. Accordingly, the Commission directs CanWest to reallocate the $5 million to the *Scripted drama production* initiative and to maintain, as a minimum, the proportion of that initiative identified for the support of 10-point scripted drama programming.

Social benefits

92. CanWest proposed social benefits valued at $13.9 million (approximately 10% of the overall benefits package). CanWest identified the following three broad envelopes, within which specific initiatives were identified:

- Training/Mentorship and Internship Programs ($10.75 million);
- Arts and Diversity Festivals ($1.8 million); and
- Media Literacy ($1.35 million).

93. In response to interventions, CanWest stated that it understood that the *Women in Media Foundation* was being rolled into the National Screen Institute (NSI) and that the Girls' Television and New Media Camps would be discontinued by the NSI, which would have a direct impact on CanWest's *Women in Media Foundation* initiative ($210,000) under the *Training/Mentorship and Internship Programs* envelope. As a result, CanWest proposed to reallocate all of the funds originally allocated to the *Women in Media Foundation* initiative to the *Arts and Diversity Festivals* envelope, increasing that envelope from $1.8 million to $2.01 million.

94. Overall, the Commission deems that the social benefits, as modified by CanWest in response to interventions, are acceptable, with the exception of the following initiative discussed below.

95. CanWest described its *Broadcast Diversity Journalism Program* initiative ($700,000) as a series of leading broadcast diversity journalism seminars comprising four sessions conducted in five Canadian markets each year. The seminars were to be delivered by CanWest professionals, as well as external experts, and targeted to "individual contributors within [CanWest's] news departments as well as local students in post-secondary broadcast and journalism programs." CanWest indicated that the seminars would not be open to other broadcasters, with the exception of Aboriginal Peoples Television Network (APTN) and Canadian Broadcasting Corporation (CBC) staff.

96. Despite CanWest's assertions regarding the inclusion of local students and APTN and CBC staff, the Commission considers that the *Broadcast Diversity Journalism Program* initiative, as currently structured, would still constitute an internal training program – an initiative not typically accepted as a tangible benefit – and thus part of the ordinary cost of doing business for broadcast licensees. Therefore, in the case of the *Broadcast Diversity Journalism Program* initiative ($700,000), the Commission finds that the applicant failed to provide sufficient evidence that might have enabled the Commission to qualify this expenditure as an unequivocal benefit.

97. Accordingly, the proposed *Broadcast Diversity Journalism Program* initiative ($700,000) is disqualified as a benefit under the Commission's policy. Nevertheless, the Commission wishes to ensure that the value of the package of acceptable tangible benefits that will be realized as a consequence of its approval of this transaction remains at least at the level proposed in the application. Accordingly, the Commission directs CanWest to reallocate the $700,000 to the *Scripted drama production* initiative and to maintain, as a minimum, the proportion of that initiative identified for the support of 10-point scripted drama programming.

98. As a result of the above change, the revised tangible benefits package would now consist of $123.7 million allocated to programming initiatives and $13.2 million to social benefits.

Value of the tangible benefits package

99. As noted earlier in this decision, the Commission has determined that the revised value of the transaction is $1.513 billion (rounded). CanWest had determined the value of the regulated broadcasting assets as $1.369 billion for the purposes of calculating the value of the tangible benefits package associated with this transaction.

100. The difference between the Commission's and CanWest's valuations is $143.5 million, 10% of which, for the purpose of calculating the value of the outstanding tangible benefits, would be $14.35 million.

101. As noted earlier, the Commission considers the model to apportion the tangible benefits to incremental programming initiatives (approximately 90%) and social benefits (approximately 10%) is appropriate and consistent with past practice. Therefore, the Commission directs CanWest to apportion the additional required benefits in a similar manner in order that the value of the incremental programming initiatives be $136.615 million ($123.7 million + $12.915 million) and the value of the social benefits $14.635 million ($13.2 million + $1.435 million).

102. Furthermore, the Commission directs CanWest to allocate the additional benefit funds associated with incremental programming initiatives to the *Scripted drama production* initiative, the revised value of which shall be $73.615 million ($60.7 million + $12.915 million) and to maintain, as a minimum, the proportion of that initiative identified for the support of 10-point scripted drama programming.

103. With regards to the additional funds allocated to social benefits ($1.435 million), the Commission, as a **condition of approval**, directs CanWest to file with the Commission, within 45 days of the date of this decision, a plan to be adopted for the allocation of these funds, subject to Commission approval.

104. As a result of the above changes, the revised tangible benefits package now consists of $136.615 million ($123.7 million + $12.915 million) allocated to incremental programming initiatives and $14.635 million ($13.2 million + $1.435 million) allocated to social benefits, and the overall value for the tangible benefits package is $151.25 million. Appendix 3 to this decision provides a summary of the approved revised tangible benefits package, with the details available on the public file.

Ensuring incrementality of the tangible benefits package

105. In its application CanWest stated that the benefits would be incremental as defined by the Commission in Public Notice 1989-109, i.e. not part of the normal responsibilities of the existing licensee. In response to interventions, CanWest reiterated the following commitments:

- all programming resulting from "priority programming" benefits initiatives, such as pilot projects, drama, and documentaries, as well as the *Celebrating Canada's Best: Award Shows/Red Carpet Tributes to Canadian Talent* initiative ($13.5 million), would have first windows on Alliance Atlantis specialty services and the expenditures would be incremental to the services' existing Canadian programming expenditure requirements as established by condition of licence;

- any of this programming that is broadcast on CanWest's over-the-air services as second or third windows would not be counted towards priority programming requirements for these services; and

- the *Canada in Focus* initiative is a new programming initiative that would not be produced in the normal course of business and the resulting programming would not be counted against any local programming commitments.

106. Further, CanWest made the following additional commitments in response to interventions:

- the *Celebrating Canada's Best: Award Shows/Red Carpet Tributes to Canadian Talent* initiative ($13.5 million) would result in programming incremental to any current CanWest activities and distinct from what CanWest currently offers on ET Canada and would showcase and expose domestic talent in television, music, film, visual arts, and prose; and

- programming resulting from the *Feature independent documentary production* initiative ($5 million) would be distinct from the material broadcast on Global Currents.

107. CanWest indicated that it would accept a condition of licence similar to the one imposed in the CTVgm/CHUM transaction (Broadcasting Decision 2007-165) to ensure that tangible television benefits expenditures are incremental to the Canadian programming expenditure requirements placed on the Alliance Atlantis services. Specifically, CanWest proposed the following as a condition of licence:

> For the purpose of fulfilling the Canadian programming expenditure requirement [as set out in the conditions of licence for each respective Alliance Atlantis specialty service], the licensee may not include any expenditure related to programming that has been funded out of the benefits package approved by the Commission with respect to CanWest's acquisition of effective control of Alliance Atlantis.

108. The Commission is satisfied that the proposed condition of licence for the specialty services will ensure that tangible television benefits expenditures are incremental to the Canadian programming expenditure requirements placed on these services. Accordingly, the Commission directs CanWest, as a **condition of approval**, to file with the Commission, within 45 days of the date of this decision, applications to amend the conditions of licence of the affected specialty services.

109. The Commission is also satisfied overall that the commitments that CanWest has made regarding incrementality will ensure that the proposed tangible benefits package will be incremental in nature. However, to enhance the transparency of this transaction and as a complement to the annual reports, which are addressed later in this decision, the Commission is directing CanWest to clearly identify the annual expenditures associated with the tangible benefits in its annual returns.

110. In addition, the Commission requires further information regarding the two initiatives discussed below to ensure that the entire tangible benefits package will be incremental.

111. With regards to the *Expansion of International News Bureaus* initiative ($10 million), the Commission notes that a goal of this initiative is to decrease CanWest's dependence on U.S. feeds and freelancers, which CanWest is currently paying for as a normal cost of doing business. This initiative will eventually result in the reduction and potentially the elimination of that cost of doing business. Therefore, the Commission directs CanWest, as a **condition of approval**, to file with the Commission for its approval, within 45 days of the date of this decision, a plan outlining the steps it will take and the undertakings it is making to ensure that this tangible benefit initiative will not be used to substitute for a normal cost of doing business.

112. With regards to the *Third party promotion of priority programming on non-television media* initiative ($4 million), the Commission notes that CanWest has indicated that this initiative will be incremental but has not indicated how that incrementality should be measured. Therefore, the Commission directs CanWest, as a **condition of approval**, to file with the Commission for approval, within 45 days of the date of this decision, the methodology that it will employ to establish a baseline (satisfactory to the Commission) to ensure that this tangible benefit initiative will be truly incremental.

Annual reports

113. CanWest in its application committed to filing detailed annual benefit reports in order to allow the Commission to verify the incrementality of these benefits.

114. Accordingly, the Commission requires the filing of a detailed audited report concurrently with the filing of the annual return for CanWest. The Commission directs CanWest, as a **condition of approval**, to meet with Commission staff, within 45 days of the date of this decision, to ensure that the format and accounting methodology to be used in the preparation of these annual reports is acceptable, appropriate and clearly understood.

Terms of Trade

115. During the hearing, a number of interveners, including the Canadian Film and Television Production Association, noted that CanWest has yet to negotiate a Terms of Trade agreement with independent producers and urged the Commission to make the negotiation of such an agreement a condition related to any approval of this transaction.

116. The Commission is of the view that Terms of Trade agreements will provide stability and clarity to all concerned parties. Therefore, further to Broadcasting Public Notice 2007-53, the Commission expects CanWest to provide draft or signed Terms of Trade agreements with independent producers as part of the licence renewal process. Those Terms of Trade agreements may be filed confidentially, but only if CanWest is able to present a rationale that convinces the Commission that granting confidentialty is appropriate in this instance. If at renewal time, this expectation has not been fulfilled, the Commission may choose to arbitrate the negotiations to develop the Terms of Trade agreements with independent producers.

Other matters

117. The Commission also notes that it requires copies of the current constituting documents for various corporations involved in the transaction for the purpose of updating its records. The Commission directs CanWest, as a **condition of approval**, to file with the Commission, within 45 days of the date of this decision, executed copies of the constituting documents for the corporations listed in Appendix 1 to this decision.

Commission's determination

118. Based on all of the above, the Commission **approves**, subject to the fulfillment of the **conditions of approval** set out above and in Appendix 1 to this decision, the application by CanWest MediaWorks Inc., on behalf of Alliance Atlantis Broadcasting Inc., for authority to transfer the effective control of Alliance Atlantis's broadcasting companies from the Trustee, Mr. James Macdonald, to CanWest through its subsidiary CW Media Inc.

Secretary General

Related documents

- *Transfer of effective control of CHUM Limited to CTVglobemedia Inc.*, Broadcasting Decision CRTC 2007-165, 8 June 2007

- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007

- *Transfer of effective control of CTV Inc. to BCE Inc.*, Decision CRTC 2000-747, 7 December 2000

- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

- *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997

- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

Appendix 1 to Broadcasting Decision CRTC 2007-429

Conditions of approval

CanWest MediaWorks Inc. (CanWest) shall, within 45 days of the date of this decision:

- submit to the Commission an executed copy of the amended Shareholders' Agreement which includes the following:

    - the amended language relating to the quorum for the Board of Directors' meeting;

    - the schedule governing the Reporting Committee as proposed by CanWest with the additional requirement that at least 80% of its members be Canadians;

    - an amended Unanimous Shareholders' Declaration which contains the revised wording proposed by CanWest at the hearing and the wording regarding the termination provision required by the Commission; and

    - the new definitions of "ordinary course of business," "material liability," the new provisions regarding the ability of one GS Capital Partners (GSCP)-nominated director to waive the GSCP veto rights, and the new threshold amounts.

- file with the Commission for approval a plan for discharging its tangible benefits obligations within seven years of the date of this decision.

- file with the Commission applications to add a condition of licence to the licences of the CanWest over-the-air services and the Alliance Atlantis specialty services requiring the allocation of all the programming-related tangible benefits to independent/non-affiliated production companies, with the exception of the following two initiatives identified by CanWest in its reply to interventions:

    - *Celebrating Canada's Best: Award Shows/Red Carpet Tributes to Canadian Talent* ($13.5 million); and
    - *Canada in Focus* ($4 million).

- file with the Commission for approval a plan for the allocation of the additional funds allocated to social benefits ($1.435 million) so as to comply with the Commission's decision as set out in paragraphs 93-97 above.

- submit applications to amend the conditions of licence of the affected specialty services to ensure that the tangible benefit expenditures are incremental to the Canadian programming expenditure requirements placed on these services.

- file with the Commission for approval a plan outlining the steps it will take and the undertakings it is making to ensure that the *Expansion of International News Bureaus* tangible benefit initiative will not be used to substitute for a normal cost of doing business.

- file with the Commission for approval the methodology that it will employ to establish a baseline (satisfactory to the Commission) to ensure that the *Third party promotion of priority programming on non-television media* initiative will be truly incremental.

- meet with Commission staff to ensure that the format and accounting methodology to be used in the preparation of the annual reports is acceptable, appropriate and clearly understood.

Corporate filings

CanWest shall also file the following documents within 45 days of the date of this decision:

1. A copy of all constituting documents (for example, Articles and Certificates of Amalgamation & By-Laws) relating to the resulting entity Showcase Television Inc.

2. A copy of all constituting documents (for example, Articles and Certificates of Amalgamation & By-Laws) relating to the resulting entity History Television Inc.

3. A copy of all constituting documents (for example, Articles and Certificates of Amalgamation or Continuance & By-Laws) relating to Life Network Inc.

4. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to SpecialtyWorks Holdco.

5. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to New AABI Amalco.

6. A copy of all constituting documents (for example, Articles and Certificates of Amendment) changing the name of 6681859 Canada Inc. to AA Acquisition Corp.

7. A copy of all constituting documents (for example, Articles and Certificates of Amalgamation & By-Laws) relating to the resulting entity AA Acquisition Corp. (i.e. amalgamation with Alliance Atlantis Communications Inc.), amended to include the requirement that the Board be composed of the same members and subject to the same quorum requirements as the CW Investments Co. Board.

8. A copy of all constituting documents (for example, Articles and Certificates of Amendment) changing the name of AA Acquisition Corp. to CW Media Inc.

9. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to Canco, amended to include the requirement that the Board be composed of the same members and subject to the same quorum requirements as the CW Investments Co. Board.

10. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to Specialty TV Co.

11. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to CW Investments Co.

12. A copy of all constituting documents (for example, Articles and Certificates of Amendment changing the capital structure & By-Laws) relating to CanWest MediaWorks Inc.

13. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to Luxco.

14. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to CanWest Media Holdings Inc., amended to include the requirement that the Board be composed of the same members and subject to the same quorum requirements as the CW Investments Co. Board.

15. A copy of all constituting documents (for example, Articles and Certificates of Incorporation, Amalgamation & By-Laws) relating to Specialty TV Holdco, amended to include the requirement that the Board be composed of the same members and subject to the same quorum requirements as the CW Investments Co. Board.

Expectation

The Commission expects CanWest to file draft or executed copies of the Terms of Trade agreements with independent producers as part of the licence renewal process.

Appendix 2 to Broadcasting Decision CRTC 2007-429

Determination of the value of the transaction as at 15 August 2007

Elements	**Sub-elements**	**Value ($ millions)**	
Payment for shares			$1,288.9
Add:	Assumed debt	304.7	
	Less: cash	73.1	
	Net debt	231.6	
	Add: assumed capital lease commitment	2.5	
	Add: assumed operating lease commitment	42.5	276.6
			1,565.5
Less:			
Non-regulated assets	Equity investment in One and Scream	1.6	
	Equity investment in The Score	37.6	
	Shared fixed assets	2.8	
	Shared services	6.4	
	Interactive operations	2.8	
	Other net assets	1.5	
Total non-regulated assets			52.7
Revised value of the transaction			1,512.8
Proposed value of the transaction			1,369.3
Adjustment			143.5

Appendix 3 to Broadcasting Decision CRTC 2007-429

Revised Tangible Benefits Package

TOTAL VALUE OF REVISED TANGIBLE BENEFITS PACKAGE: $151.25 MILLION	
On screen and programming	$136.615 million (approx. 90%) • Scripted drama and other priority programming ($100.115 million) • Expansion of documentary production ($9 million) • Supporting a growing Canadian star system ($13.5 million) • News and public affairs ($14 million)
Social	$14.635 million (approx. 10%) • Training/mentorship and internship programs ($9.84 million) • Arts and diversity festivals ($2.01 million) • Media literacy ($1.35 million) • Yet to be allocated ($1.435 million)

Onscreen and programming

Initiative	Description	Amount
SCRIPTED DRAMA AND OTHER PRIORITY PROGRAMMING		
Pilot projects for scripted drama programming	Funding the production of a combination of expensive hour-long scripted drama pilots as well as 30-minute scripted drama pilots to increase the volume of pilots in production over the benefits period. Pilots will be broadcast on one or more Alliance Atlantis specialty service.	$13.5 million
Scripted drama production	For incremental scripted drama production dedicated to an appropriate English-language Alliance Atlantis specialty service (e.g., Showcase, History Television, IFC Canada, Showcase Action, Showcase Diva). A minimum of 60% of the funds are to be allocated to 10-point scripted drama productions, with a maximum of 40% of the funds to be allocated to scripted drama productions earning less than 10-point certification, but at a minimum earning 8-point certification.	$73.615 million
New media support for incremental programming resulting from benefits	For the development of emerging media content specifically tied to new incremental programming initiatives flowing from the benefits. Funds will not be used to fund series extensions under the drama benefit initiative. However, funds may be used to produce new media content in connection with Canadian series extensions of new incremental programming generated through the benefits initiatives.	$4 million
APTN Aboriginal drama project	To fund as-yet-unspecified drama productions by independent Aboriginal producers for exhibition on APTN and CanWest stations/services. APTN would receive the first broadcast window, and CanWest would receive a second window.	$2 million
Passchendaele feature film:	To complete funding gap of the Rhombus Media-produced historical feature film Passchendaele ($1 million), as well as to fund an educational component including a web- and video-based teaching package related to the film ($500,000).	$1.5 million
Canadian history project	To support a programming/new media project related to Canadian history that would include a programming and web/video or other new media component designed to encourage learning about Canada’s history. The new media component of this broadcasting initiative may be distributed in schools.	$1.5 million

Initiative	Description	Amount
Third party promotion of priority programming on non-television media	Incremental third-party promotion of the scripted drama and other priority programming initiatives (i.e., the promotional spending would be tied directly to new programming initiatives generated by benefits monies) provided by independent production companies.	$4 million
EXPANSION OF DOCUMENTARY PRODUCTION		
Provision of completion financing for independent documentary production and creation of a $1 million documentary development fund	Completion financing ($3 million) to ensure a higher quality finished product with particular relevance to video and sound production and/or preparation for festival and international exhibition (e.g., versioning, dubbing of masters). Initiative will support approximately 37 hours of documentary programming. A $1-million documentary development fund, which will support a minimum of 20 additional hours of documentary programming over the benefits period. Documentaries receiving completion financing from this particular benefit could be aired by any broadcaster.	$3 million and $1 million respectively
Feature independent documentary production	To fund feature or "high-end" documentaries, defined as 90 minutes in length or more, and costing in excess of $1 million. CanWest anticipates support for a limited number of such documentaries (three or four), with exhibition on one or more appropriate Alliance Atlantis specialty service (e.g., History Television, IFC Canada). CanWest fully expects to support all stages of development and execution, including an emphasis on promotion across multiple media.	$5 million
SUPPORTING A GROWING CANADIAN STAR SYSTEM		
Celebrating Canada's best: award shows/red carpet tributes to Canadian talent	This initiative is designed to help support the domestic English-language star system via production and/or broadcast of a number of Canadian awards ceremonies (one or two per year), red carpet tributes and other programming which showcases and exposes domestic talent in television, music, film, visual arts, and prose. CanWest anticipates a diversity component to this initiative (i.e., expanded broadcast of awards ceremonies of diversity festivals and events).	$13.5 million

Initiative	Description	Amount
NEWS AND PUBLIC AFFAIRS		
Canada in Focus	The introduction of a weekly 30-minute current affairs program offering Canadians a dynamic mix of politics, social issues, engaging dialogue, and a showcase for Canadian journalists. The program (36 original episodes per year) will feature examinations of issues relevant to a wide range of Canadians. CanWest will combine this initiative with an on-line component to provide a sustained platform for dialogue so the conversation will not end when the program signs off.	$4 million
Expansion of International News Bureaus	Building upon the success of Global National, and with the goal of decreasing its dependence on U.S. feeds and freelancers, CanWest proposes to establish four international news bureaus. The bureaus will each be staffed by a Canadian journalist as well as a photo journalist. This additional presence should provide a new Canadian "on the ground" perspective on world events.	$10 million

Social

Initiative	Description	Amount
TRAINING/MENTORSHIP AND INTERNSHIP PROGRAMS		
National Screen Institute (NSI)	CanWest will provide funding to ensure the continuation of the NSI Global Marketing Training Program. It is anticipated that this initiative will produce four to five graduates per year.	$1.5 million
Canadian Film Center (CFC) – The Actor's Conservatory	In partnership with the CFC this initiative will help launch the Actor's Conservatory, consisting of four distinct components: (1) A four-month intensive training program for actors; (2) Masterclass program with internationally acclaimed actors; (3) Star building initiative; and (4) CFC as the talent destination, with Emerging Best Performers Awards.	$1.5 million
Banff World Television Festival	Funding for two new training programs: the Global Television Writers Apprenticeship program, and the Showrunners program.	$3 million
Canadian Women in Communications (CWC)	CanWest is providing funds for this initiative over seven years, to ensure its continued success. It is anticipated that the CWC initiative will produce 30 to 40 graduates per year.	$700,000

Initiative	Description	Amount
Women in Film & Television-Toronto (WIFT-T): Training	To encourage the learning and promotion of women and visible minorities in Canadian film and television, CanWest proposes to work with WIFT-T to create two training initiatives to help develop the careers of these two groups: The Business Learning Initiative and The Diversity Initiative. It is anticipated that these two initiatives will each produce 40 graduates per year.	$500,000
Innoversity Creative Summit	Support for the Innoversity Creative Summit.	$210,000
Canadian Council for Aboriginal Business (CCAB)	The CCAB, in partnership with CanWest, will develop a scholarship program for Aboriginal students who are enrolled in post-secondary institutions, studying film and television. A total of four scholarships will be awarded each year over a six-year period. Funding for this initiative will also include an annual membership to the CCAB.	$190,000
National Aboriginal Achievement Foundation (NAAF)	CanWest in partnership with NAAF will create, deliver, and monitor the progress of a *Taking Pulse* module entitled Broadcasting in the Classroom (part of the Industry in the Classroom series).	$500,000
CanWest internship for persons with disabilities	In each of seven years, CanWest will hire five interns with disabilities, for 3-4 month internships. As well as providing a salary for the interns, this inititiative will provide funding to adapt work stations with necessary software, custom furniture or other required tools.	$460,000
York University	CanWest will support the creation of a high-definition digital studio at York University, including renovations and acquisition of production and post-production equipment.	$1 million
Nova Scotia Community College	This initiative will help equip the Radio and Television Arts program control room and newsroom studio with the latest technology.	$280,000
ARTS AND DIVERSITY FESTIVALS		
Arts and diversity festivals	This initiative will support a number of annual festivals promoting diversity in film, television and the media. CanWest will work with organizers each year to determine how best to allocate the funds.	$2.01 million
MEDIA LITERACY		
Media Awareness Network (MNet)	Support for Mnet, to be used for media literacy programs.	$500,000

Initiative	Description	Amount
Learning through the Arts (LTTA)	CanWest will contribute to the establishment of the LTTA's National Media Literacy Program. This program will enable multimedia artists, filmmakers, actors, and writers to work with children to deliver the government's newly-launched curriculum in media literacy, by encouraging students to create their own complex multimedia productions.	$500,000
Concerned Children's Advertisers (CCA)	Support for the Long Live Kids campaign developed by CCA as part of the Children's Healthy Active Living Program.	$350,000
YET TO BE ALLOCATED		
	Description to be provided	$1.435 million