



## Broadcasting Decision CRTC 2009-699

Route reference: 2009-644

Ottawa, 9 November 2009

### **0859291 B.C. Ltd.**

Victoria, Sooke, River Jordan, Port Alberni and Campbell River, British Columbia

*Applications 2009-1298-2 and 2009-1302-1, received 24 September 2009*

*Public Hearing in the National Capital Region*

*30 October 2009*

### **CHEK-TV Victoria and its transmitters – Acquisition of assets**

*The Commission **approves** applications by 0859291 B.C. Ltd. for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership, the assets of the English-language television station CHEK-TV Victoria and its transmitters and for a broadcasting licence to continue the operation of the undertakings.*

*The Commission **renews** the broadcasting licence for CHEK-TV Victoria until 31 August 2016. The licence will be subject to the terms and **conditions** set out in the appendix to this decision.*

*Given the specific context of the renewal and the financial difficulties of the station, the Commission intends to re-evaluate issues related to the broadcast of priority programming at a public hearing to be held in 2012.*

### **Introduction**

1. The Commission received applications from 0859291 B.C. Ltd. (the applicant) for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership (Canwest), the assets of the English-language television programming undertakings CHEK-TV Victoria and its transmitters CHEK-TV-1 Sooke, CHEK-TV-2 River Jordan, CHEK-TV-3 Port Alberni and CHEK-TV-5 Campbell River, British Columbia. The applicant also requested a new broadcasting licence to continue the operation of the undertakings until 31 August 2016.
2. Given that the station would no longer be part of a large multi-station ownership group, the applicant also requested to be relieved of the condition of licence requiring it to broadcast priority programming and to be relieved of the commitments relating to CHEK-TV's former sister station CHAN-TV Vancouver.

3. Currently, Mr. John Pollard is the sole shareholder of 0859291 B.C. Ltd. As part of the proposed transaction, the applicant will be owned by a consortium of local investors, 39 employees of CHEK-TV and Communications Energy and Paperworkers Union locals. Its board of directors will exercise effective control pursuant to the terms of the Shareholders' Agreement dated 23 September 2009.
4. Pursuant to a temporary management agreement dated 4 September 2009, the Trustee, Mr. James MacDonald, has interim management and effective control of the above-mentioned undertakings, as approved by the Commission in a letter also dated 4 September 2009. Furthermore, the Trustee holds all issued and outstanding shares in the capital of 0859291 B.C. Ltd. for the benefit of Mr. John Pollard.
5. As part of this process, the Commission received and considered interventions with respect to the applications. The public record for this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and determinations**

6. After examining the applications in light of applicable regulations and policies and taking into account the interventions and the applicant's reply to the interventions, the Commission considers that the issues to be addressed in its determinations are the following:
  - the proposed value of the transaction;
  - the proposed tangible benefits package;
  - the proposed elimination of priority programming;
  - the proposed elimination of commitments relating to CHEK-TV's former sister station CHAN-TV;
  - closed captioning;
  - described video; and
  - audio description.

### **Value of the transaction**

7. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable.

8. The purchase price for the transaction, as set out in the purchase agreement, is \$2. The agreement also provides for the purchase price to include the value of the defined net working capital as of 4 September 2009.
9. The applicant provided a calculation of the value of the transaction, which includes a value for accounts receivable to be transferred from Canwest to the applicant, a value for assumed leases and an estimate of the value of the net working capital. The applicant determined that the value of the transaction amounts to a negative amount of \$131,960.
10. In its calculation of the value of a transaction, it is Commission practice to adjust the purchase price to take into account a number of elements such as the working capital and the assumed leases, where applicable. In the present case, although the applicant has considered these items in its calculations, the Commission has made some adjustments to their valuation.
11. In calculating the value of the transaction, the applicant deducted accounts receivable to be received from Canwest. Such an adjustment should not be included in the calculation on the basis that the Asset Purchase Agreement does not provide for the accounts receivable to be received from Canwest to be part of the purchase price, but rather as a means of payment in case of a negative purchase price due to the net working capital. Consequently, the Commission has added back the value of \$200,000 representing the accounts receivable in question to the calculation of the value of the transaction.
12. As per its practice, the Commission has determined the value of lease commitments without discounting future payments. Also in accordance with its practice and in the absence of a note to financial statements on lease commitments, the Commission included an estimated value for five years of all leases expected to be renewed or being negotiated. The Commission also included the value of the one-year transitional lease between the applicant and the vendor. All of these adjustments with respect to assumed leases amount to \$743,543.
13. In accordance with its practice, the Commission also included uncertain payments in the amount of \$239,900 for news production equipment.
14. With respect to the estimated value of the net working capital, the Commission has not made any adjustments.
15. Accordingly, considering the purchase price of \$2 and the various adjustments to the value of the transaction, the resulting value amounts to \$1,051,485 ( $-\$131,960 + \$200,000 + \$743,543 + \$239,900 + \$2$ ).

#### **Tangible benefits**

16. As set out in Public Notice 1989-109 and reaffirmed in Public Notice 1993-68, in the absence of a competitive process, application of the benefits test remains the best method of ensuring that applications for transfer of control or ownership are the best possible proposals under the circumstances, and are beneficial to the public served by the undertakings and to the Canadian broadcasting system as a whole.

17. As indicated in Public Notice 1999-97, 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.
18. In the present case, the applicant has not proposed a tangible benefits package on the basis that the station is facing financial difficulties and that the station was slated to be closed by the current owner—Canwest—as a result of the station’s unprofitability. Instead, the applicant has offered a number of intangible benefits that would result from the transaction. These include the continuation of the television service, the preservation of employment opportunities, the enhancement of the diversity of voices and diversity of ownership in the Vancouver Island region, as well as the transition to digital broadcasting.
19. The Commission notes that the operation is currently losing approximately \$12 million per year and has not shown any marked improvement in profitability over the past three years.
20. In light of the above, the Commission considers that relieving the applicant of its obligation to provide a tangible benefits package equal to 10% of the value of the transaction is appropriate in this instance.

**Elimination of priority programming**

21. In its application, the applicant requested to be relieved of the condition of licence requiring it to broadcast priority programming. Specifically, the applicant requested that the Commission delete, from the broadcasting licence, the following conditions related to the provision of priority Canadian programming:

*Conditions imposed in Decision 2001-458 and renewed in Broadcasting Decision 2009-409*

1. a) The licensee must broadcast, at a minimum, in each broadcast year, an average of eight hours per week of Canadian programs in the priority program categories between 7 p.m. and 11 p.m., from Monday to Sunday. As defined in Public Notice 1999-205, the priority program categories are:

Canadian drama programs; Canadian music and dance and variety programs; Canadian long-form documentaries; Canadian regionally-produced programs in all categories other than News and information and Sports; Canadian entertainment magazine programs.

b) For the purpose of fulfilling the above-noted condition, the licensee may claim the new dramatic programming credit set out in Public Notice 1999-205, as may be amended from time to time.

*Conditions imposed in Decision 2001-458-14 and renewed in Broadcasting Decision 2009-409*

4. b) In accordance with Decision 2000-224, the licensee shall broadcast, at a minimum, in each broadcast year, an average of 8 hours per week of Canadian programs in the priority program categories between 7 p.m. and 11 p.m. which are wholly separate and distinct from the eight hours of priority programming to be broadcast on CHAN-TV.

For the purpose of this condition, the priority program categories are as follows: Canadian drama programs (category 7); Canadian music and dance (category 8a) and variety programs (category 9); Canadian long-form documentaries (category 2b); Canadian regionally-produced programs in all categories other than News and information (categories 1, 2 and 3) and Sports (category 6); Canadian entertainment magazine programs.

c) For the purpose of fulfilling the above-noted condition, the licensee may claim the new dramatic programming credit set out in Public Notice 1999-205, as may be amended from time to time.

The licensee is no longer entitled to claim the dramatic programming credit set out in the appendix to Public Notice 1984-94 and appendices I and II to Public Notice 2000-42.

22. In its application, the applicant argued that the imposition of minimum levels of priority programming is not appropriate for a stand-alone, independent station facing significant financial challenges, as the requirement to broadcast priority programming was intended to be applied only to the larger multi-stations ownership groups.
23. The Commission received interventions commenting on the applicant's proposal to eliminate the requirement to broadcast priority programming from the Canadian Film and Television Production Association, the Writers Guild of Canada and the Alliance of Canadian Cinema, Television and Radio Artists. The interveners requested that the applicant either broadcast some form of priority programming or show a minimum of Canadian feature films.
24. In its reply to the interventions, the applicant noted that only large multi-station groups have been required to broadcast priority programming. It argued that CHEK-TV, as a stand-alone station, does not have the financial resources to acquire original priority programming. However, it accepted having an expectation that it make best efforts to broadcast priority programming whenever possible. The applicant also noted that, under the current priority programming regime, most programming categories other than news, information and sports, when produced on Vancouver Island, could be considered priority programming as set out in Public Notice 1999-205.

25. The Commission considers that it would not be appropriate to require the applicant to broadcast priority programming at this time given the current financial difficulties of the station. Accordingly, CHEK-TV is relieved of the condition of licence relating to priority programming. However, the Commission expects the applicant to make best efforts to broadcast priority programming whenever possible. Furthermore, as discussed below, the Commission intends to re-evaluate the issue of the broadcast of priority programming by the applicant at a public hearing to be held in 2012.

**Elimination of commitments relating to CHEK-TV's former sister station CHAN-TV**

26. In its application, the applicant requested to be relieved of the following commitments:

*Commitment set out in Decision 2001-458-14*

The Commission also notes the commitment made by the licensee regarding CHEK-TV, as set out in the same decision, that management of programming and of news at CHEK-TV shall be kept separate from that of its sister station, CHAN-TV Vancouver.

*Commitment set out in Decision 2000-221*

No more than 10% of the overall programming aired on the station in any broadcast week shall duplicate that aired on its sister station (CHAN-TV in the case of the Victoria station).

27. The applicant stated in its application that these commitments reflected Canwest's previous ownership of both stations, and that given that CHEK-TV would be independently owned and operated, they are no longer required.
28. Given the change of ownership, the Commission considers that it is no longer necessary to have a commitment that CHEK-TV and CHAN-TV maintain separate management of programming and news. Similarly, it is also no longer relevant to limit to 10% the overlap of programming between CHEK-TV and CHAN-TV. Accordingly, the applicant is relieved of the commitments to that effect.

**Closed captioning**

29. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English- and French-language broadcasters to caption 100% of their programs, with the exception of advertising and promos. Accordingly, the Commission requires the applicant to caption 100% of its English-language and French-language programs, beginning in the first year of the licence term. A **condition of licence** to this effect is set out in the appendix to this decision.
30. Further, as set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), when captions are available, the Commission expects the applicant to provide viewers with a closed captioned version of all programming aired during the overnight period.

31. The Commission notes that it announced in Broadcasting Regulatory Policy 2009-406, that it will accept, as eligible Local Programming Improvement Fund expenses, expenses associated with the provision of live closed captioning of local programming by independently-owned stations, such as CHEK-TV, which are not part of a large multi-station group.
32. In the Accessibility Policy, the Commission stated that it intends to require television licensees to abide by certain conditions of licence relating to closed captioning at the time of their next licence renewal. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill these conditions immediately. Accordingly, the Commission requires the applicant, beginning in year 4 of its licence term:
  - to ensure that all advertising, sponsorship messages and promos are closed captioned; and
  - to put in place a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.
33. The Commission also requires the applicant to adhere to the quality standards on closed captioning developed by the television industry's working groups, once approved by the Commission and as amended from time to time. **Conditions of licence** to this effect are set out in the appendix to this decision.
34. In the past year, the Commission received evidence of three instances where closed captioning during portions of CHEK-TV's local news programming was incomprehensible.
35. In the Accessibility Policy, the Commission stated that it would require television licensees to develop and submit mechanisms and procedures related to quality control of closed captioning, including procedures to ensure that closed captioning is present throughout the entire program.
36. Accordingly, the Commission requires the applicant to develop and submit mechanisms and procedures related to quality control of closed captioning, including preventative measures and solutions to ensure that captioning during live news programs is comprehensible. These mechanisms and procedures must be received by the Commission for its approval within three months of the date of this decision. A requirement to this effect is set out in the appendix to this decision.

#### **Described video**

37. As set out in the Accessibility Policy, the requirement to provide programming with described video is no longer limited to stations owned by large ownership groups or to priority programming. In the Accessibility Policy, the Commission stated that it is of the view that persons with disabilities should be able to access programming with described

video from both the public and private sectors in French and English and that basic levels of described video should be available on a wide variety of services. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill a condition of licence related to the provision of described video immediately.

38. Accordingly, the Commission requires, by **condition of licence**, the applicant to provide an average of 4 hours per week of described programming, of which 50% must be original to the service, beginning in year 4 of its licence term. To fulfill this requirement, the described programming may be drawn from the following categories: 2(b) Long-form documentary; 7 Drama and comedy; 9 Variety; and 11 General entertainment and human interest as well as programming targeted to children.

#### **Audio description**

39. In the Accessibility Policy, the Commission stated that it intends to require television licensees to implement audio description by condition of licence at the time of their next licence renewal. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill a condition of licence related to the provision of audio description immediately. Accordingly, the Commission requires the applicant to provide audio description for all news and information-based programs, including those that are in-house productions, beginning in year 4 of its licence term. A **condition of licence** to this effect is set out in the appendix to this decision.

#### **Conclusion**

40. In light of the above, the Commission **approves** the applications by 0859291 B.C. Ltd. for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership, the assets of the English-language television programming undertakings CHEK-TV Victoria and its transmitters CHEK-TV-1 Sooke, CHEK-TV-2 River Jordan, CHEK-TV-3 Port Alberni and CHEK-TV-5 Campbell River and for a broadcasting licence to continue the operation of the undertakings.
41. Upon surrender of the current licence issued to Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership, the Commission will issue a new licence to 0859291 B.C. Ltd.
42. The applicant requested a seven-year licence term for CHEK-TV from 1 September 2009 to 31 August 2016. The Commission notes that a number of interveners recommended that the applicant be granted a shorter licence term, or at a minimum, be called to a public hearing in 2012. The interveners argued that adopting either one of these proposals would allow the Commission to address any licensing or other regulatory issues in a timely fashion.

43. The Commission acknowledges the programming-related concerns raised by interveners. It also notes that the applicant accepted in its reply to the interventions to be called to a public hearing in 2012 to review issues related to CHEK-TV's priority programming.
44. The Commission determines that a seven-year licence term is appropriate for CHEK-TV in this instance. As set out in the appendix to this decision, this seven-year licence term is conditional on the applicant presenting itself at a public hearing to be held in 2012 when the Commission intends to re-evaluate issues related to the broadcast of priority programming. Accordingly, the licence for the English-language television programming undertaking CHEK-TV will expire 31 August 2016 and will be subject to the terms and **conditions** set out in the appendix to this decision.

Secretary General

#### **Related documents**

- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Licence renewals*, Broadcasting Decision CRTC 2009-409, 6 July 2009
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Licence renewal for CHEK-TV*, Decision CRTC 2001-458-14, 2 August 2001
- *Licence renewals for the television stations controlled by Global*, Decision CRTC 2001-458, 2 August 2001
- *Acquisition by CanWest Global Communications Corp., through its wholly-owned subsidiary CW Shareholdings Inc., of the ownership interests held previously by WIC Western International Communications Ltd. in various conventional television stations and in certain other broadcasting undertakings*, Decision CRTC 2000-221, 6 July 2000
- *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements*, Public Notice CRTC 1999-205, 23 December 1999
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

- *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993
- *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

*This decision is to be appended to the licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*

## **Appendix to Broadcasting Decision CRTC 2009-699**

### **Terms, conditions of licence, expectations and encouragement for CHEK-TV Victoria and its transmitters in Sooke, River Jordan, Port Alberni, and Campbell River, British Columbia**

#### **Terms**

The licence will expire 31 August 2016.

The expiry date is conditional on the licensee presenting itself at a hearing to be held in 2012 to discuss issues related to the broadcast of priority programming.

The Commission requires the applicant to develop and submit mechanisms and procedures related to quality control of closed captioning, including preventative measures and solutions to ensure that captioning during live news programs is comprehensible. These mechanisms and procedures must be received by the Commission for its approval by 9 February 2010.

#### **Conditions of licence**

1. The licensee shall broadcast a minimum of seven hours of local programming per broadcast week.
2. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
3. The licensee shall adhere to the provisions of the Canadian Association of Broadcasters' *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
4. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the *CAB Violence Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended as long as the licensee is a member in good standing of the Canadian Broadcast Standards Council.
5. The licensee shall not affiliate with or disaffiliate from any network operator without the prior written approval of the Commission.
6. The undertaking shall be operated on the basis of the contours and particulars contained in the approved application.

7. The licensee shall caption 100% of the English- and French-language programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
8. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, once approved by the Commission and as amended from time to time.
9. The licensee shall, beginning in year 4 of its licence term:
  - ensure that all advertising, sponsorship messages and promos are closed captioned; and
  - put in place a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.
10. The licensee shall broadcast, beginning in year 4 of its licence term, an average of 4 hours per week of described programming, of which 50% must be original to the service.
 

To fulfill this condition, the described programming may be drawn from the following categories: 2(b) Long-form documentary; 7 Drama and comedy; 9 Variety; and 11 General entertainment and human interest, as well as programming targeted to children.
11. The licensee shall provide audio description for all news and information-based programs, including those that are in-house productions, beginning in year 4 of its licence term.
12. Unless otherwise authorized by the Commission, the licensee shall not transmit analog television signals after 31 August 2011.

## **Expectations**

The Commission expects the licensee to make best efforts to broadcast priority programming whenever possible.

When captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all programming aired during the overnight period.

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

## **Encouragement**

### **Employment equity**

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.