



Broadcasting Decision CRTC 2011-163

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Ottawa, 7 March 2011

BCE Inc.
Across Canada

*Application 2010-1506-6, received 24 September 2010
Public Hearing in the National Capital Region
1 February 2011*

Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries

*The Commission **approves** an application by BCE Inc. (BCE), on behalf of CTVglobemedia Inc. (CTVgm), for authority to change the effective control of CTVgm's licensed broadcasting subsidiaries to BCE. The Commission concludes that the transaction will be beneficial to the Canadian broadcasting system by ensuring the long-term stability of a significant Canadian television network and advancing the Commission's objective of providing relevant high-quality Canadian programming to Canadians through conventional and new media distribution channels.*

In approving this transaction, the Commission has required BCE to make specific commitments to benefit the broadcasting system. Specifically, as part of the tangible benefits resulting from this transaction and in order to meet certain outstanding tangible benefits related to the previous transfer of effective control of CTV Inc. to BCE in 2000, BCE will spend \$245 million over the next seven broadcast years to:

- *commission independently produced programs of national interest – drama and comedy series, documentaries and award shows that promote Canadian culture (\$100 million);*
- *enhance local news in Western markets (\$28.8 million);*
- *enable the carriage of at least 43 additional television services, including local and regional conventional television stations as well as independent and non-branded community-based television services (\$60 million);*
- *sustain the A-Channel stations for at least three years, starting on 1 September 2011 (\$30 million);*
- *fund an independent Broadcasting Accessibility Fund to improve the accessibility of the Canadian broadcasting system (\$5.7 million);*

- *create an independent fund to help pay the costs of public interest groups that participate in Commission broadcasting proceedings (\$3 million); and*
- *support the development of Canadian musical and spoken word talent (\$17.5 million).*

The Commission acknowledges the concerns raised by interveners that issues related to program exclusivity may arise from the acquisition of Canada's largest broadcaster by BCE, one of the largest players in the distribution, Internet and wireless sectors. Accordingly, the Commission imposes a moratorium on new exclusive programming agreements. Specifically, until the Commission implements its determinations in the upcoming vertical integration proceeding, BCE is prohibited from entering into new exclusive programming agreements that would prevent it from making available to its competitors, on commercial terms, mobile and broadband rights to television programming from its conventional and specialty services. The Commission also expects other vertically integrated entities to abide by this moratorium and not to enter into such agreements until it publishes its determinations on vertical integration.

Introduction

1. The Commission received an application by BCE Inc. (BCE), on behalf of CTVglobemedia Inc. (CTVgm), for authority to change the effective control of CTVgm's licensed broadcasting subsidiaries to BCE.
2. BCE, a public corporation controlled by its board of directors, currently holds 15% of the voting interest in the capital of CTVgm. The other shareholders are 1565117 Ontario Limited (a corporation ultimately controlled by Mr. David Kenneth R. Thomson) (40% of the voting interest), Ontario Teacher's Plan Board (25% of the voting interest) and Torstar Corporation (20% of the voting interest).
3. Under the transaction agreement dated 10 September 2010, BCE will acquire the remaining 85% of the voting interest in the capital of CTVgm and will therefore exercise effective control.
4. The Commission received over 500 interventions, including interventions in support of the application, interventions offering general comments and interventions in opposition. The complete record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

5. After examining the application in light of applicable regulations and policies and taking into account the interventions received and BCE's replies, the Commission considers that the issues to be addressed in its determinations are:
 - the value of the transaction;

- the interpretation and application of the benefits policy;
- the proposed tangible benefits package – television;
- the proposed tangible benefits package – radio;
- terms of trade;
- vertical integration and distribution; and
- programming exclusivity.

Value of the transaction

6. Because the Commission does not solicit competing applications for authorization to change the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.
7. BCE submitted that the total value of the transaction was \$3.2 billion, which includes an equity value of \$1.5 billion and \$1.7 billion in debt. BCE submitted that the broadcasting assets represented approximately \$2.9 billion of the total value.
8. BCE filed a valuation report prepared by PricewaterhouseCoopers (PwC) which grouped and valued the assets of CTVgm in different categories. Most of the values in the PwC report were determined using an average of two methods: 1) capitalized earnings before interest, taxes, depreciation and amortization and 2) discounted cash flows. PwC stated that its conclusions of value fell within a likely range of plus or minus 10% considering the nature of the broadcast assets and the valuation methodologies used.
9. As established in Broadcasting Public Notice 2008-57, the Commission determines the value of transactions based on the economic interest acquired and adds elements such as assumed debt to this value in the same proportion as the economic interest. Consistent with this practice, the PwC report calculated the value of the 85% voting interest acquired by BCE and allocated the value among the broadcasting assets as follows:

PwC valuation of the transaction

	(\$ million)
Conventional television	262
Specialty television	1,888
Total television	2,150
Radio	318

PwC valuation of the transaction	2,468
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10. In its determination, the Commission has used the values provided by BCE for the assumed debt, the unregulated assets and the value of assets sold prior to the current transaction.¹ However, consistent with its general practice, the Commission has adjusted the value of assumed leases over five years without discounting.
11. The Commission notes that the PwC report excluded other assets from the calculation of the transaction value: tax loss benefits, CTVgm's minority interest in NHL Network and Viewers Choice Canada and certain redundant land. BCE submitted that there was no precedent for the inclusion of tax losses in the value of the transaction. It also argued that the losses were separable from the broadcast business. BCE stated that the redundant land was excluded from the PwC valuation because it was not currently contributing to the broadcast business. BCE added that the valuation excluded CTVgm's minority interests in NHL Network and Viewers Choice Canada as no change in control had occurred.
12. The Commission has considered the rationale provided by BCE for excluding these elements and has determined that they should be included in the value of the transaction for the following reasons:
- While tax loss benefits are not typically identified separately, it is the Commission's practice to include losses in the value of the transaction. These losses can be used to offset profits from broadcasting operations and as such their value belongs with the broadcasting assets.
 - As regards the minority interest in NHL Network and Viewers Choice Canada, it is the Commission's practice in transactions involving multiple assets to include minority interests in broadcasting undertakings in the transaction value.
 - Finally, the Commission notes that the land is located adjacent to broadcasting properties and that there is no certainty regarding its future use. As such, consistent with its practice for other elements not specifically assigned to a class of assets (e.g. assumed debt or leases), the Commission has allocated the value of redundant land among all types of assets through the allocation of the transaction value discussed below.
13. The following table presents the transaction value as determined by the Commission.

¹ With respect to the assets sold prior to the current transaction, see Broadcasting Decisions 2010-792, 2010-953 and 2010-972.

Commission value of the transaction

	(\$ million)	
Purchase price (85%)		1,296
Add (85%)		
Assumed debt	1,513	
Assumed leases	39	1,552
Subtotal		2,848
Deduct (85%)		
Unregulated assets	(139)	
Sold radio stations (CHBN-FM & CHST-FM)	(23)	
Sold specialty service (<i>travel + escape</i>)	(6)	(168)
Commission value of the transaction		2,680

14. To determine the appropriate amount of the tangible benefits package, it is necessary to allocate the resulting value of the transaction between all of the different types of assets being purchased. The Commission relied on the PwC report to calculate the percentage of the total value allocated to television assets, radio assets and assets not subject to tangible benefits. The Commission then applied these percentages to its valuation of the transaction to arrive at the values of television and radio assets subject to tangible benefits.
15. To assess the allocation of the PwC value between the different types of assets, the Commission requested that BCE file its “live model,” which contains the supporting calculations behind the valuation report. On the basis that the live model represents PwC’s intellectual property and that releasing it could result in significant risk management concerns, BCE did not file this information.
16. The supporting argument for the Commission to have access to the live model was to test and evaluate the assumptions and projections behind the PwC valuation and its allocation among the different types of assets. In light of BCE’s refusal to provide this information, the Commission has revised the allocation of assets in the PwC valuation. This adjustment is based on a negative inference that the PwC allocation could have been formulated to reduce the overall tangible benefits package. Consequently, the Commission has reduced the PwC valuation of radio by 10% and added this amount to the PwC valuation for television.
17. The following table illustrates the values and allocations based on the Commission’s analysis:

	PwC values	PwC values (adjusted by the Commission)		Commission allocation of value	
	Value (\$ million)	Value (\$ million)	% of the value	Commission valuation (\$ million)	Value of tangible benefits (\$ million)
Total television	2,150	2,182	82.77	2,218	221.8
Radio	318	286	10.86	291	17.5
Subtotal	2,468	2,468		2,509	
Unregulated assets and sold stations	168	168	6.37	171	n/a
Total	2,636	2,636		2,680	239.3

Interpretation and application of the tangible benefits policy

18. In Public Notice 1989-109, the Commission established that the goal of the benefits policy was to allow the market to govern the transfer of broadcasting licences as part of ownership transactions while recognizing that licensees benefit from the use of public property. The purpose of the policy is to ensure that the applicant has filed the best overall proposal under the circumstances to compensate for the absence of a public call for applications. The Commission determined that the benefits to the broadcasting system should be commensurate with the size and nature of the transaction.
19. As indicated in Broadcasting Public Notice 2007-53 and Broadcasting Regulatory Policy 2010-499, tangible benefits should generally amount to 10% of the value of television undertakings and 6% of the value of radio undertakings. In the case of transactions involving multiple types of undertakings, the value of the transaction is allocated among the different types of assets to apply the tangible benefits policy.
20. In its application, BCE argued that it had already paid tangible benefits in the context of its acquisition of CTV Inc. in 2000. Moreover, BCE argued that it had never fully relinquished control of CTVgm and that imposing tangible benefits would represent double taxation and would be inconsistent with the Commission's tangible benefits policy.
21. However, in a letter of 25 October 2010 in response to questions from the Commission, BCE submitted a \$70.3 million tangible benefits package for consideration should the Commission determine that tangible benefits were appropriate. In its letter, BCE argued that the broadcasting assets it acquired when it

purchased CTV Inc. in 2000, as well as those which it acquired and developed between that acquisition and 2006, should be excluded from the benefits calculation. BCE also argued that no tangible benefits should be paid on the assets of broadcast services in competitive genres. Finally, BCE submitted that tangible benefits on conventional television stations should be payable at a rate of 5% rather than 10%. According to BCE, this rate would be consistent with the approach taken by the Commission in Broadcasting Decision 2010-782, which dealt with a change in the effective control of Canwest Global Communications Corp.'s (Canwest Global) licensed broadcasting subsidiaries.

22. On 3 December 2010, in response to the Commission's request for a proposal more representative of the tangible benefits policy, BCE submitted a revised tangible benefits proposal of \$220.8 million over seven years. This submission was calculated by applying a 5% rate on the value of conventional television assets, a 10% rate on the value of specialty services and a 6% rate on the value of radio assets.
23. On 1 February 2011, at the hearing, BCE committed to paying benefits but maintained its position that a discounted 5% rate should be applied to the conventional television assets. In its opening statement, BCE also submitted a new version of its 3 December 2010 proposal that contained a revised allocation of the benefits funds.
24. On 4 February 2011, in its oral reply, BCE used the valuation that was presented by the Commission at the public hearing, adjusting the total value of the benefits package to \$223.1 million. However, BCE continued to maintain that based on Broadcasting Decision 2010-782 and the financial situation of CTVgm's conventional television assets, a discounted 5% rate should apply to the conventional television assets.
25. The Commission notes that it clearly stated in Broadcasting Decision 2010-782 that it was granting flexibility based on the uncertainties caused by Canwest Global's operating under the protection of the *Companies' Creditors Arrangement Act* and the difficulty in maintaining operational performance for the assets being purchased. As such, at the hearing, the Commission stated that granting a 5% discounted rate for CTV's conventional television assets would be inconsistent with the tangible benefits policy.
26. In its final reply dated 7 February 2011, BCE submitted a tangible benefits package of \$217.1 million, representing 10% of the value of the television assets, and \$19.9 million, representing 6% of the value of the radio assets.

Proposed benefits package – television

27. In addition to representing 10% of the value of the transaction, television tangible benefit expenditures should be incremental, should be directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction and should generally flow to third parties, such as independent producers.

28. In its 7 February 2011 submission, BCE proposed a tangible benefits package for television of \$217.1 million to be paid over seven years. The package contains initiatives for onscreen programming and multiplatform content, sustaining local programming in A-Channel markets and supporting local television stations through satellite carriage. The proposal is set out in the table below.

BCE's proposed initiatives	Amount (\$ million)
Onscreen programming and multiplatform content	
<ul style="list-style-type: none"> Independently produced programs of national interest (PNI) Enhanced local news in Winnipeg, Regina, Saskatoon, Edmonton, Calgary and Vancouver <p>(Up to 20% of PNI amount would be dedicated to multiplatform content.)</p>	<p>93.3</p> <p>28.8</p> <p>Total: 122.1</p>
Support local television stations through satellite carriage	60
Sustain local programming in A-Channel markets	
<ul style="list-style-type: none"> Local programming Master control units for A-Channels 	<p>30</p> <p>5</p>
Total television tangible benefits	217.1

Onscreen programming and multiplatform content

29. This initiative included two funding envelopes: \$93.3 million for independently produced programs of national interest (PNI) and \$28.8 million for incremental local news programming in several Western markets, namely Winnipeg, Regina, Saskatoon, Edmonton, Calgary and Vancouver.

Interventions

30. During the intervention period and at the public hearing, several interveners, including the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the Canadian Federation of Musicians, the Directors Guild of Canada, the Writers Guild of Canada and the Canadian Media Production Association (CMPA), argued that the tangible benefits package should include more programming initiatives. These interveners stated that the Commission's general practice is to expect that 85% of all television tangible benefits be directed toward programming initiatives. In addition, the CMPA submitted that all programming initiatives relating to PNI should be directed to independent producers.

31. At the public hearing, the Alberta Motion Picture Industries Association and On Screen Manitoba argued that tangible benefits spending should include provisions for regional independent productions. These interveners submitted that the use of independent producers from all regions of Canada will best ensure that the tangible benefits resulting from this transaction are consistent with the objectives of the *Broadcasting Act*.

Commission's analysis and determinations

32. The Commission considers that the benefits allocated to programming initiatives and PNI are consistent with its standard approach and precedents, reflect the evolving multiplatform environment in which broadcasters operate and are commensurate with the value of the transaction. However, the Commission notes that under BCE's proposal up to 20% of PNI initiatives would be directed toward online or multiplatform content. While it is aware of the evolution of delivery methods and the importance of new media content, the Commission is concerned that such a level could subsidize the non-regulated sector at the expense of the regulated broadcasting system.

33. In Broadcasting Regulatory Policy 2010-833, the Commission stated that a cap of 10% on new media productions would provide certified independent production funds with the flexibility to support new media projects while still ensuring that a significant level of funding remains for traditional television and film production. Accordingly, consistent with this policy and the approach of the Canadian Media Fund, the Commission directs BCE to revise its benefits package to ensure that no more than 10% of the benefits dedicated to independently produced PNI will be spent on online or multiplatform content. In addition, consistent with the approach announced in Broadcasting Regulatory Policy 2010-167, the Commission expects BCE to commission PNI from all regions of Canada.

34. With respect to the total amount of television benefits, based on the Commission's revised value of the transaction, these benefits increase from \$217.1 to \$221.8 million. As such, an additional expenditure of \$4.7 million is required, representing the difference between BCE's proposal of 7 February 2011 and the tangible benefits based on the revised value of the transaction. In light of the importance of the independent production community to the Canadian broadcasting system, the Commission directs BCE to allocate this amount to independently produced PNI and expects BCE to show how it has met this requirement as part of its annual return.

Support for local television stations through satellite carriage

35. As part of its 7 February 2011 tangible benefits package, BCE proposed to provide satellite carriage for an additional 43 local television services. This initiative would be made possible by replacing all of BCE's installed high definition (HD) MPEG-2 set-top boxes with MPEG-4 capable boxes within a 12-15 month timeframe. BCE submitted that this would free sufficient capacity to allow for increased carriage of

local over-the-air (OTA) stations. BCE submitted that this initiative would cost \$84 million, of which \$60 million would be counted toward its tangible benefits package.

Interventions

36. Quebecor Media Inc. (Quebecor), Cogeco Cable Inc. (Cogeco) and Shaw Communications Inc. (Shaw) stated that allowing BCE to use tangible benefits to invest in technical upgrades for its direct-to-home (DTH) satellite broadcasting distribution undertaking (BDU) would give it a competitive advantage over other Canadian BDUs. Other parties, including the Independent Broadcasters' Group, stated that the carriage of local conventional stations would be a benefit to the Canadian broadcasting system.

Commission's analysis and determinations

37. The Commission has indicated, in particular during its recent DTH policy review, that increased carriage of local conventional stations by satellite would benefit the system by providing Canadians with broader access to more local programming. At the same time, the Commission recognizes that carriage of local conventional stations by DTH services is difficult, given satellite capacity limitations.
38. BCE's proposal would make substantial progress in increasing access to local television programming by allowing all of its DTH customers to access additional local conventional television programming. The Commission acknowledges that BCE's move to MPEG-4 would create surplus capacity for additional services. However, any excess capacity will be used to provide increased choice to Canadians, including the carriage of additional Canadian television services. Accordingly, the Commission views both the carriage of local services and the creation of additional capacity as a benefit to the Canadian broadcasting system. Consequently, the Commission accepts BCE's proposal to allocate \$60 million of its total benefits package toward this initiative and directs BCE's DTH service to carry at least 43 additional television services that meet the following criteria in standard definition by 31 August 2012 and to make these services available as part of the basic package in the appropriate local markets:
- local stations eligible for the Local Programming Improvement Fund (LPIF);
 - non-branded community-based television services;
 - non-LPIF-eligible local stations that meet the five-hour (French language) and seven-hour (English language) minimum local programming commitment; and
 - existing independent television stations that currently operate in markets that are required to convert to digital transmission on 31 August 2011.
39. As indicated above, this proposal would create capacity beyond that required to carry these 43 additional services. As such, the Commission expects that the additional

capacity will facilitate BCE's carriage of other independent Canadian television services.

40. In addition, the Commission requires BCE to provide independent accounting for all costs as part of its annual reports on tangible benefits and to spend the allocated \$60 million by 31 August 2012. If the funds are not spent by that date, any outstanding amounts must be directed to independently produced PNI under the terms specified above. For greater certainty, the Commission also directs BCE to file, within 30 days of the date of this decision, a complete list of all additional services to be carried as part of this tangible benefits package.

Sustaining local programming in A-Channel markets

41. At the hearing, BCE repeatedly stated that the future of the A-Channel stations was uncertain and that these stations needed assistance to maintain their current programming levels. Consequently, in its tangible benefits package of 7 February 2011, BCE proposed to dedicate \$35 million to the A-Channel stations, including \$30 million for local programming and \$5 million for upgrading the master controls for the stations. BCE's proposal included a promise to keep the A-Channels open for three years, regardless of their financial performance. These benefits would sustain rather than increase the current level of local programming provided by the individual A-Channel stations. BCE submitted that the A-Channels currently provide programming beyond their regulatory obligations and stated that without benefits funding the continued operation of the A-Channels was in doubt.

Interventions

42. Several interveners, including Patrick Brown, MP for Barrie, Ontario, the Ottawa Food Bank, the Ottawa Regional Cancer Foundation and the Quartier Vanier Merchants Association, appeared at the hearing to support the tangible benefits initiatives directed toward sustaining the A-Channels.
43. However, many interveners, including Quebecor and ACTRA, argued that any initiative that included technical upgrades for HD broadcasting, such as the proposed investment for master control units for the A-Channels, should not be accepted as tangible benefits by the Commission as these upgrades are now part of the cost of doing business for any broadcaster.

Commission's analysis and determinations

44. The Commission acknowledges that in recent years the overall viability of conventional television stations has been in question. Recent Commission decisions, including the creation of the LPIF, have been intended to sustain and improve the programming of local conventional stations and ensure Canadians' access to local OTA programming.
45. The Commission notes that programming funded by tangible benefits is intended to be incremental (i.e. over and above current programming levels). However, the

tangible benefits policy set out in Public Notice 1993-68 allows that in certain cases current expenditures can be deemed incremental if their continuation is in doubt because of ongoing financial difficulties. In this case, BCE submitted that without additional funding the current levels of programming on the A-Channels would be unsustainable. The Commission therefore approves BCE's tangible benefits initiative to sustain local programming in A-Channel markets. Notwithstanding the above, the Commission requires that the A-Channel programming resulting from the benefits spending be incremental to any programming produced to meet LPIF requirements. In addition, the Commission requires BCE to fulfill the commitment made at the hearing to keep the A-Channels in operation for at least three broadcast years starting 1 September 2011.

46. In Broadcasting Public Notice 2006-74, the Commission stated that the cost of the transition to HD is a cost of doing business for both distributors and programmers. Consequently, the Commission determines that the proposed investment in master control units for the A-Channels does not qualify as a tangible benefit. The Commission requires BCE to redirect \$2 million of the money so allocated to independently produced PNI under the terms specified above and the remaining \$3 million to a new Canadian Broadcasting Participation Fund (CBPF), as proposed by the Public Interest Advocacy Centre (PIAC) in its intervention and discussed in the following section.

The Canadian Broadcasting Participation Fund (CBPF)

47. PIAC submitted a proposal for an independent fund to represent non-commercial consumer interests before the Commission in its broadcasting proceedings.

Commission's analysis and determinations

48. The Commission considers that PIAC's submission presents an appropriate starting point for the development of the CBPF's mandate, as well as insights relating to its governance and operation. PIAC stated that the goal of this new fund would be to represent non-commercial user interests before the Commission in its broadcasting proceedings. The Commission further considers that the CBPF should facilitate the participation of public interest and consumer groups across Canada in both official languages. The fund should be used to assist in the representation, research and advocacy of these interests. The Commission therefore directs BCE to file a proposal for the CBPF within 60 days of the date of this decision. BCE should include in its proposal detailed information on the mandate of the fund, its funding and its governance structures, as well as a clear reporting mechanism. Other parties to the present proceeding will be given the opportunity to comment on the proposal in a follow-up process to be established. Further details regarding the establishment of this fund are set out in Appendix 2.

Conclusion

49. Based on the revisions set out above, the Commission directs BCE to adhere to the tangible benefits package set out in Appendix 1. At the hearing, BCE confirmed that

the tangible benefits would be expended over a seven-year period and provided a payment schedule as part of its final comments. Because this decision modifies BCE's proposal in several respects, the Commission further directs BCE to file a revised payment schedule within 30 days of the date of this decision.

50. In addition, the Commission requires BCE to adhere to its payment schedule, once filed, and to submit annual reports to the Commission by 30 November of each year detailing its progress in fulfilling its tangible benefits.

Unfulfilled television benefits

51. The Commission noted at the hearing that \$9.9 million of tangible benefits related to the transfer of effective control of CTV Inc. to BCE authorized in Decision 2000-747 remained unfulfilled. When questioned at the hearing, CTV indicated that \$5.7 million of the outstanding funds are recouped dollars from benefits spent following the 2000 transaction. It further indicated that the remaining \$4.2 million was allocated in the original benefits package for Heroes, Champions and Villains movies.
52. The Commission expects that the remaining \$4.2 million be allocated to onscreen benefits as planned, and more specifically to independently produced PNI. In addition, the Commission requires BCE to provide clear updates on the expenditure of these outstanding benefits in its annual reports on tangible benefits.
53. In its final reply letter of 7 February 2011, BCE proposed to allocate \$5.7 million in recouped funds as a one-time payment to an independent Broadcasting Accessibility Fund, as discussed in the following section.

The Broadcasting Accessibility Fund

54. During the hearing, several interveners, including Media Access Canada on behalf of the Access 2020 Coalition, highlighted the necessity of working toward a fully accessible broadcasting system for persons with disabilities. The Commission places great importance on ensuring the fulfillment of section 3(1)(p) of the *Broadcasting Act*, which states that "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose." The Commission considers that accessibility solutions are attainable with appropriate initiatives and regulation. Accordingly, the Commission accepts BCE's proposal to allocate \$5.7 million to create a permanent Broadcasting Accessibility Fund and directs it to file a proposal in this regard within 60 days of the date of this decision. BCE should include in its proposal detailed information on the mandate of the accessibility fund, its funding and its governance structures, as well as a clear reporting mechanism. Other parties to the present proceeding will be given the opportunity to comment on the proposal in a follow-up process to be established.
55. The Commission's preliminary view on the mandate of the fund is that it should focus on innovation that provides platform-neutral solutions to ensure accessibility of all broadcasting content. The Commission notes that as with all tangible benefits, this fund is generally to be used for incremental initiatives. The focus on innovation is

also consistent with the Commission's previously stated view that it is more cost-effective to make new technology, applications and services accessible to persons with disabilities early in the development process. Further details on the establishment of this fund are set out in Appendix 2.

Proposed benefits package – radio

56. Consistent with the Commission's tangible benefits policy announced in Broadcasting Public Notice 2006-158, BCE proposed a tangible benefits package for radio equal to 6% of the proposed value of the transaction.

57. In Broadcasting Regulatory Policy 2010-499, the Commission amended its approach to the allocation of radio tangible benefits. Accordingly, the tangible benefits for radio undertakings are to be distributed as follows over seven broadcast years:

- 3% to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5% to FACTOR or MUSICACTION;
- 1% to a Canadian content development (CCD) initiative, at the discretion of the purchaser; and
- 0.5% to the Community Radio Fund of Canada.

58. Considering the revised value of the transaction and the allocation of this value as described above, the value of the tangible benefits package for radio will decrease from the proposed \$19.9 million to \$17.5 million. Accordingly, the Commission directs BCE to allocate its benefits contribution as set out in Appendix 1. Further, given the magnitude of the benefits, the Commission directs BCE to submit with its annual return for each of the next seven years a detailed report on the manner in which these tangible benefits have been spent.

59. At the hearing, BCE confirmed that the tangible benefits would be spent over a seven-year period and provided a payment schedule as part of its final comments. Because this decision modifies BCE's proposal in several respects, the Commission further directs BCE to file a revised payment schedule within 30 days of the date of this decision.

Remaining tangible benefits

60. The Commission expects BCE to meet all outstanding spending commitments made by CTVgm and its subsidiaries as a result of previous ownership transactions involving the stations acquired in this transaction, as set out in Broadcasting Decisions 2004-402, 2007-165, 2007-368 and 2010-964.

Non-compliance

61. As a result of this ownership transaction BCE will now own all of CTVgm's radio stations. Commission analysis has shown that CJCH-FM Halifax, CFBT-FM Vancouver, CFWM-FM Winnipeg and CKCE-FM Calgary may have failed to comply with their respective conditions of licence concerning CCD contributions. The Commission notes that it will evaluate each of these stations' compliance with its CCD obligations at licence renewal.

Terms of trade

62. Several interveners, including the CMPA, commented on the issue of terms of trade. The CMPA requested that the Commission direct BCE to continue CTVgm's leadership role in terms of trade negotiations and to conclude an agreement before the upcoming conventional television licence renewals.

63. The establishment of terms of trade agreements emerged as an issue in the proceeding leading to Broadcasting Public Notice 2007-53. At that time, the Commission expressed the opinion that the development of terms of trade agreements between broadcasters and independent producers to provide stability and clarity would be in the interest of the broadcasting industry as a whole. Since then, within the context of several public proceedings, the Commission has communicated its expectation that at the upcoming conventional television licence renewals, broadcasters either will have in place terms of trade agreements or will have demonstrated efforts to negotiate such agreements with independent producers.

64. At the hearing, BCE stated that significant progress had been made in negotiations with the CMPA. It further indicated that an agreement on terms of trade was likely in the near future.

65. The Commission is encouraged by BCE's plans to complete the terms of trade negotiations before the licence renewal hearing. In the event that no agreement is reached prior to that hearing, however, the Commission will require BCE to file its substantive proposals with the Commission as part of the record of that hearing and will then establish appropriate provisions for terms of trade as part of its determinations.

Vertical integration and distribution

66. In a transaction in which one party purchases the assets of one of its product suppliers, the Commission may consider matters such as whether the transaction gives rise to concerns about gate-keeping, undue preference or other anti-competitive practices potentially associated with vertical integration and with cross-ownership in general.

67. In this case, CTVgm supplies BCE with programming services that BCE provides to its subscribers through its satellite and terrestrial distribution facilities. The *Broadcasting Distribution Regulations* (the BDU Regulations) stipulate certain terms

and conditions under which BCE is required to provide CTVgm and other broadcasters with access to its distribution facilities. Similarly, other provisions of the BDU Regulations, the *Television Broadcasting Regulations, 1987*, the *Pay Television Regulations, 1990* and the *Specialty Services Regulations, 1990* stipulate terms and conditions under which CTVgm must offer its programming to distributors.

68. The Commission notes that it announced in Broadcasting Notice of Consultation 2010-783 that it will hold a public hearing in June 2011 to review the regulatory framework relating to vertical integration (i.e. the ownership by one entity of both programming and distribution undertakings or both programming undertakings and production companies). In that proceeding, the Commission intends to consider whether it is appropriate to expand upon existing safeguards, including in particular the reverse onus provisions applicable to undue preference or disadvantage allegations, so as to better take into account changes in the broadcasting industry.

Positions of parties

69. Several interveners argued that additional safeguards should be put in place immediately to limit the potential for abuse of market power and anti-competitive behavior by BCE-CTV. While recognizing that the Commission had announced that it would consider the effectiveness of existing safeguards in the upcoming vertical integration proceeding, parties argued that if the application were approved, the newly created BCE-CTV entity would hold enough market power to considerably harm smaller undertakings pending the outcome of that hearing.
70. Some interveners, including Cogeco, TELUS Communications Company and Bragg Communications Inc., proposed specific safeguards, such as the application of reverse onus and undue preference provisions to all distribution platforms, the imposition of a structural separation to prevent BCE's distribution arm from accessing competitively sensitive information regarding other distributors from CTVgm, the strengthening of dispute resolution provisions and the introduction of new reporting and disclosure provisions. Cogeco added that if these measures were not adopted as a result of this application, it should be a condition of approval that BCE-CTV be made fully subject to any additional safeguards or requirements resulting from the vertical integration proceeding.
71. The Canadian Cable Systems Alliance (CCSA) also argued that since BCE would be both a direct competitor and a content provider to independent BDUs, further protections should be put in place before the approval of this application. Specifically, the CCSA stated that there should be timelier and more effective dispute resolution mechanisms in place before independent industry players are forced to enter into commercial negotiations with large vertically integrated enterprises.
72. In reply, BCE submitted that there was no need to modify the current regulatory framework for the Canadian broadcasting system, since it has been effective in dealing with integrated businesses for several years. BCE noted that Quebecor, Rogers Communications Inc. (Rogers) and Shaw have all been controlling both

programming and distribution undertakings under the current safeguards, which have been sufficient to guard against anti-competitive behaviour by these companies. BCE added that it had already been the majority owner of CTVgm for over five years until 2006 and that allegations of anti-competitive behaviour had not been an issue during that period. BCE argued that a return of BCE as a majority owner of CTVgm should not create more concerns.

73. BCE further argued that it would be asymmetrical to impose new regulatory restrictions as part of this hearing, since none of the other large integrated companies already in the market would be subject to these restrictions and the Commission did not impose such requirements on Shaw when it recently approved its acquisition of Canwest Global.

74. BCE nevertheless agreed to submit to the Commission on a confidential basis existing affiliation agreements between CTVgm and BCE that were negotiated on an arm's length basis.

Commission's analysis and determinations

75. The Commission has in the past approved applications authorizing the ownership by one entity of both programming and distribution undertakings, including the previous acquisition of CTV by BCE, the acquisition of TVA by Quebecor, the acquisition of the Citytv stations by Rogers and the acquisition of Canwest Global by Shaw.²

76. In light of the growing trend of industry consolidation, as well as concerns expressed by several interveners during the proceeding leading to the acquisition of Canwest Global by Shaw, the Commission concluded there was merit in initiating a policy hearing to consider whether additional regulatory tools and measures are necessary to more effectively deal with vertical integration issues and to better prevent possible anti-competitive behaviour.

77. The Commission acknowledges the concerns expressed by different interveners regarding the possibility of abuse of market power by a large vertically integrated entity. However, it is not convinced that additional safeguards need to be put into place before the vertical integration proceeding scheduled for June 2011. In the Commission's view, it would be more appropriate to examine measures to address potential anti-competitive behaviour by vertically integrated companies in a broader policy context than to examine measures solely related to the BCE-CTV companies.

78. The Commission considers that the vertical integration proceeding will be the most appropriate and timely forum to consider expanding existing measures related to vertical integration. The Commission also notes that if it determines that additional safeguards are needed as a result of this proceeding, such safeguards will apply to BCE and other vertically integrated companies, as the Commission considers appropriate. In the meantime, the Commission requires BCE to submit the existing

² See Broadcasting Decisions 2000-747, 2001-384, 2007-360 and 2010-782.

affiliation agreements between CTVgm and BCE that were negotiated on an arm's length basis no later than 30 days from the date of this decision.

Programming exclusivity

79. The availability of content on multiple platforms (television, wireless, Internet, tablets, etc.) in an environment where some companies control several of these platforms raises potential concerns about the exclusivity of content.

Positions of parties

80. Many interveners argued that the proposed transaction would put BCE in a position to retain exclusivity over CTVgm's programming, especially on mobile platforms. Other interveners noted that BCE already announced its intentions by stating that this transaction would give it the ability to exploit exclusive content as an advantage over its competitors. Some parties proposed safeguards to address this issue, such as a prohibition or a moratorium on programming exclusivity.

81. BCE opposed the proposed measures, stating that it would not be appropriate to have regulations that apply only to BCE and not to its competitors. At the hearing, BCE also stated that it fully anticipated making linear television products broadly available to the market under a model that is being developed.

Commission's analysis and determinations

82. The Commission reiterates its view that the vertical integration proceeding will be the best forum to consider issues related to vertical integration, including programming exclusivity. However, the Commission acknowledges the concerns of certain interveners that issues related to program exclusivity may arise from the acquisition of Canada's largest broadcaster by BCE, one of the largest players in the distribution, Internet and wireless sectors. In the Commission's view, BCE's public statements placing emphasis on the provision of exclusive content to its subscribers and especially to its wireless subscribers reinforce such concerns.

83. In light of the above, the Commission imposes the following moratorium. Until the Commission implements its determinations in the vertical integration proceeding, BCE is prohibited from entering into new exclusive programming agreements that would prevent it from making available to its competitors, on commercial terms, mobile and broadband rights to television programming from its conventional and specialty services. The Commission also expects other vertically integrated entities to abide by this moratorium and not to enter into such agreements until it publishes its determinations on the vertical integration issue.

Ownership

84. The Commission directs BCE to file with the Commission, upon closing of the transaction, the complete updated ownership information for the various corporations involved.

Conclusion

85. In light of the above, the Commission **approves** the application by BCE Inc., on behalf of CTVglobemedia Inc., for authority to change the effective control of CTVgm's licensed broadcasting subsidiaries to BCE.

Secretary General

Related documents

- *CHBN-FM Edmonton – Acquisition of assets*, Broadcasting Decision CRTC 2010-972, 23 December 2010
- *CFXJ-FM Toronto – Acquisition of assets*, Broadcasting Decision CRTC 2010-964, 23 December 2010
- *CHST-FM – Acquisition of assets*, Broadcasting Decision CRTC 2010-953, 22 December 2010
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010
- *travel + escape – Corporate reorganization (acquisition of assets), and transfer of ownership and control*, Broadcasting Decision CRTC 2010-792, 26 October 2010
- *Review of the regulatory framework relating to vertical integration*, Broadcasting Notice of Consultation CRTC 2010-783, 22 October 2010
- *Change in the effective control of Canwest Global Communications Corp.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2010-782, 22 October 2010
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Allocation of the transaction value in changes in the effective control of broadcasting undertakings – Information bulletin*, Broadcasting Public Notice CRTC 2008-57, 30 June 2008
- *Acquisition of assets*, Broadcasting Decision CRTC 2007-368, 12 October 2007

- *Transfer of effective control of 1708487 Ontario Inc., 1738700 Ontario Inc. and CHUM Television Vancouver Inc. to Rogers Media Inc.*, Broadcasting Decision CRTC 2007-360, 28 September 2007
- *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
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006
- *CFOX and CHBE-FM Victoria – Acquisition of assets*, Broadcasting Decision CRTC 2004-402, 3 September 2004
- *Transfer of effective control of TVA to Quebecor Média inc.*, Decision CRTC 2001-384, 5 July 2001
- *Transfer of effective control of CTV Inc. to BCE Inc.*, Broadcasting Decision CRTC 2000-747, 7 December 2000
- *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 each licence.*

Appendix 1 to Broadcasting Decision CRTC 2011-163

Revised Tangible Benefits Package (\$239.3 million)

Television (\$221.8 million)

Onscreen programming and multiplatform content (\$128.8 million)

- \$100 million to independently produced programs of national interest (PNI)
 - No more than 10% of the funds for the creation of PNI may go toward online or multiplatform content.
 - 100% of PNI will be produced by independent producers.
- \$28.8 million for enhanced local news in the Winnipeg, Regina, Saskatoon, Edmonton, Calgary and Vancouver markets
 - Incremental new local morning newscasts and programming content in:
 - Winnipeg – 3 hours x 5 days per week
 - Regina – 3 hours x 5 days per week
 - Saskatoon – 3 hours x 5 days per week
 - Edmonton – 3 hours x 5 days per week
 - Calgary – 3 hours x 5 days per week
 - Vancouver – 3 hours x 5 days per week
 - Additional incremental news programming:
 - Edmonton – 5 p.m. local newscast, 1 hour x 5 days per week
 - Vancouver – noon newscast, 1 hour x 5 days per week

Supporting local television stations through satellite carriage (\$60 million)

- Carriage of at least 43 additional television services, including local and regional conventional television stations as well as independent and non-branded community-based television services

Sustaining local programming in A-Channel markets (\$30 million)

- Maintain the local programming that airs on all of CTV's A-Channel stations (CIVI-TV Victoria, CHWI-TV Windsor, CFPL-TV London, CKVR-TV Barrie, CHRO-TV Pembroke/CHRO-TV-43 Ottawa) for at least three broadcast years starting on 1 September 2011

Canadian Broadcasting Participation Fund (\$3 million)

- Independently administered fund that will focus its activities on the representation of the interests of non-commercial consumers of broadcasting services regulated by the Commission across Canada and in both official languages
- The fund will provide assistance with the representation, research and advocacy of those interests.

Radio (\$17.5 million)

- \$8.750 million to the Radiostarmaker Fund or Fonds Radiostar;
- \$4.375 million to FACTOR or MUSICACTION;
- \$2.917 million to any of the above initiatives, other Canadian content development initiatives or other eligible third parties; and
- \$1.458 million to the Community Radio Fund of Canada.

Appendix 2 to Broadcasting Decision CRTC 2011-163

Guidelines for the establishment of independent funds resulting from benefits

While the Broadcasting Accessibility Fund and Canadian Broadcasting Participation Fund are not production funds, the Commission considers that the established governance and accountability criteria for the creation of independent production funds (Public Notices 1997-98 and 1999-29 and Broadcasting Regulatory Policy 2010-833) represent an appropriate model for the two funds to be established as part of BCE's tangible benefits package. The establishment of clear rules with respect to governance, accountability and funding decisions will ensure that these funds are eligible for contributions from other sources, including annual contributions by broadcasting distribution undertakings (BDUs) to the broadcasting system and future tangible benefits from transfers of ownership or control.

The proposals to be filed by BCE should include clear provisions detailing the means of selecting the boards of directors (including their initial composition) and a provision for the distribution of the fund in the unlikely event of their dissolution to ensure that monies are directed to other qualifying funds. The proposals should also provide details on the mandate, structure and administration of these funds, including information on the process by which projects or initiatives are chosen to receive funds.

Consistent with the criteria articulated in Public Notice 1999-29, the composition of the boards of directors of the funds is to adhere to the following criteria: 1) all members must be Canadian; 2) no more than one third of the members may be members representing BDUs or broadcasters, casting no more than one third of the votes in a meeting; and 3) all decisions must be made by majority vote.

The Commission considers that the remaining directors should be representative of the relevant stakeholder groups. With respect to the Broadcasting Accessibility Fund, these directors must be persons with disabilities, representatives of disability organizations and/or other parties with relevant expertise in developing or implementing accessibility solutions. For the Canadian Broadcasting Participation Fund, the remaining directors should represent consumer and public interest organizations with non-commercial mandates. The parties representing stakeholder groups must cast at least two thirds of the votes in a meeting.

For certified independent production funds, the Commission typically establishes that no more than 5% of the fund contributions should be spent on fund administration. In the case of the Broadcasting Accessibility Fund, considering that there may be additional administrative expenses related to accommodation to ensure effective participation by persons with disabilities on the board, the Commission may be flexible in this regard. In its proposal, BCE should specify and provide justification for any proposed departure from the usual maximum level of administrative expenses.