Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2007-165

Ottawa, 8 June 2007

CTVglobemedia Inc. (formerly Bell Globemedia Inc.),
on behalf of CHUM Limited
Across Canada

Application 2006-1667-5, received 18 December 2006
Public Hearing in the National Capital Region
30 April 2007

Transfer of effective control of CHUM Limited to CTVglobemedia Inc.

In this decision, the Commission ***approves*** *an application by which CTVglobemedia Inc. will acquire effective control of CHUM Limited subject to the condition that CTVglobemedia Inc. divest of CHUM Limited's Citytv stations. These stations are CKVU-TV Vancouver; CKAL-TV Calgary; CKEM-TV Edmonton, CHMI-TV Portage La Prairie/Winnipeg; and CITY-TV and CITY-DT Toronto.*

Dissenting opinions by Commissioners Duncan and Langford are attached.

Introduction

1. The Commission received an application by CTVglobemedia Inc. (CTVgm, the applicant), on behalf of CHUM Limited (CHUM), to transfer effective control of CHUM to CTVgm through its wholly-owned subsidiary 1714882 Ontario Inc. The proposed transaction would be effected through the transfer of all of the common shares of CHUM, currently in trust, to 1714882 Ontario Inc.

2. CTVgm is a leading multi-media company. It controls Canada's largest private broadcaster, CTV Inc., and *The Globe and Mail*, a leading daily national newspaper. Through CTV Inc.'s wholly-owned subsidiary CTV Television Inc., CTVgm owns and operates 25 conventional and 2 transitional digital television stations, and the satellite-to-cable service Atlantic Satellite Network (ASN). It also owns or has interests in 20 specialty television services. It does not own any radio undertakings. CTVgm also has ownership interests in a number of other media initiatives, including production and Internet portals.

3. CHUM is also a leading media company and content provider. Its broadcasting activities include conventional television, specialty television services and radio. CHUM owns and operates 13 conventional television stations, one of which is a CBC-affiliated station. The other 12 stations are divided into 2 groups, the Citytv stations and the A-Channel stations. One of the Citytv stations is a transitional digital television station. CHUM also owns or has interests in 20 specialty television services, including 4 being proposed for

divestiture. It also owns ACCESS Alberta – The Educational Station, the station designated by the Province of Alberta as an educational broadcaster. Finally, CHUM owns 34 radio programming undertakings, including 14 AM stations and 20 FM stations. CHUM additionally has ownership interests in a number of media initiatives, including production facilities, and CHUM City International, which operates outside Canada.

4. The applicant's proposed tangible benefits package for the CHUM broadcasting undertakings involved in the current transaction amounts to $103.5 million. Of these benefits, approximately 74% would be allocated to television and 26% to radio.

5. CTVgm proposed that 85% of the television benefits would be allocated to new incremental priority programming initiatives and the remaining 15% to incremental grants for social and industry initiatives. CTVgm proposed to self-administer the programming benefits as a "one-stop shopping" opportunity for creators in the financing, development and support of their projects, and as a direct pipeline to television screens. This approach is in lieu of administering the benefits independently through a third party fund.

6. CTVgm also proposed that 50% of its total radio benefits be allocated to the Radio Starmaker Fund and 33% to the Foundation Assisting Canadian Talent on Recordings (FACTOR). The remaining amount would be divided between Aboriginal Voices Radio, the Canadian Academy of Recording Arts and Sciences and a proposed "CHUM Music Fest" to be held during Canadian Music Week. CTVgm submitted that its proposed radio benefits package is in accordance with the Commission's benefits policy set out in Broadcasting Public Notice 2006-158 (the Commercial Radio Policy).

7. Finally, CTVgm proposed to divest certain CHUM broadcasting undertakings to independent third parties. According to CTVgm, applications for the acquisition of these services would be filed by the third parties in due course, along with proposed tangible benefits packages.

The proceeding

8. The Commission received written interventions in connection with this application. Twenty-six parties made oral presentations at the hearing. Participating parties included members of the public, unions and guilds, commercial television broadcasters, representatives of the independent production industry, and other stakeholders. 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 CRTC Web site at www.crtc.gc.ca under "Public Proceedings."

9. The Commission has identified five primary issues to be addressed in its determinations:

- Ownership of multiple conventional television stations in a market;
- Value of the transaction and associated benefits;
- Tangible benefits;
- Programming issues; and
- The 5:1 rule for the carriage of Category 2 digital specialty services by broadcasting distribution undertakings (BDUs).

Ownership of multiple conventional television stations in a market

10. Paragraph 3(1)(i)(iv) of the *Broadcasting Act* (the Act) states that programming provided by the Canadian broadcasting system should “provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.” The Commission has relied on this objective when addressing common ownership issues.

11. In Public Notice 1999-97 (the 1999 Television Policy), the Commission reaffirmed its Common Ownership Policy, which generally permits ownership, by one party, of no more than one conventional television station in one language in a given market. The Common Ownership Policy is designed to ensure that a diversity of voices exists in a given market. It further serves to maintain competition in each market.

12. Over the years, the Commission has granted exceptions to the Common Ownership Policy in individual cases. The rationale for such exceptions has generally rested on two elements: a) the need to sustain strong, locally focused programming for smaller communities located adjacent to large urban centres and, b) the financial ability of the licensee to provide such local programming, and thus contribute to the diversity of voices, while maintaining a viable enterprise.

13. To guard against a decrease in diversity in cases where exceptions are made to the Common Ownership Policy, the Commission has imposed measures addressing the provision of local programming as well as the provision of programming that is distinct from that of its “sister” station in the same market.

14. CTVgm indicated that it would divest of CHUM’s A-Channel group[1] of conventional television stations, as well as the CBC-affiliated television station CKX-TV Brandon, if the application were approved. It would also divest of ACCESS Alberta – The Educational Station, the specialty services known as Canadian Learning Television and Sex-TV: The Channel, as well as the shares currently held in MusiquePlus Inc. However, CTVgm would acquire and retain CHUM’s Citytv group of conventional television

[1] The A-Channel stations are CIVI-TV Victoria and its transmitter CIVI-TV-2 Vancouver; CHRO-TV Pembroke; CHRO-TV-34 Ottawa; CFPL-TV London; CHWI-TV Wheatley and its transmitter CHWI-TV-60 Windsor; CKNX-TV Wingham; and CKVR-TV Barrie and its transmitter CKVR-TV-1 Parry Sound.

stations.[2] As a result of its acquisition of the Citytv stations, CTVgm would own two English-language television stations in each of the markets of Vancouver/Victoria (with two stations in Vancouver), Edmonton; Calgary; Portage La Prairie/Winnipeg; and Toronto/Hamilton (with two stations in Toronto). Approval of the transaction would therefore require that the Commission grant exceptions to its Common Ownership Policy in those markets.

15. CTVgm submitted that, while the Common Ownership Policy generally permits ownership of no more than one conventional television station in one language in a given market, exceptions to this policy have been consistently made over the years.

16. CTVgm contended that acquisition of the Citytv stations would allow it to compete on a more level structural playing field with CanWest MediaWorks Inc. (CanWest) in the Ontario, Vancouver/Victoria, Edmonton and Calgary television markets. The applicant argued that, for the past six years, CanWest has operated two originating conventional television stations in each of those markets, while CTVgm has been limited to just one, thus placing it at a significant disadvantage. At the hearing, CTVgm also submitted that the competition provided by new media should be a consideration.

17. CanWest submitted, in its intervention, that CTVgm has mischaracterized CanWest’s ownership positions in several markets, leaving the impression that it is seeking equilibrium with CanWest in those markets.

18. CanWest argued that there is no precedent for the current transaction, and particularly the proposed exceptions to the Common Ownership Policy. It stated that the CanWest stations in Montréal, Edmonton and Calgary are irrelevant to the policy consideration. While the CanWest stations in Toronto/Hamilton and Vancouver/Victoria required exceptions to the Common Ownership Policy, the intervener argued that the current application by CTVgm is distinct and requires a separate analysis. CanWest submitted that there is simply no evidence of any structural or competitive disadvantage to CTVgm under the current situation, as claimed by the applicant. CanWest stated that CTVgm’s audience and revenue results over a number of years clearly indicate that, if there is a market imbalance, it is to CTVgm’s benefit.

19. The Canadian Broadcasting Corporation (CBC) argued in its intervention that the proposed transaction would result in a concentration of ownership that would have an unacceptable impact on the plurality and diversity of voices in the English-language market, and would directly conflict with the Commission’s Common Ownership Policy.

---

[2] The Citytv stations are CKVU-TV Vancouver and its transmitter CKVU-TV-1 Courtenay; CKAL-TV Calgary and its transmitter CKAL-TV-1 Lethbridge; CKEM-TV Edmonton and its transmitter CKEM-TV-1 Red Deer; CHMI-TV Portage La Prairie/Winnipeg; CITY-TV Toronto and its transmitters CITY-TV-2 Woodstock and CITY-TV-3 Ottawa; and the transitional digital television station CITY-DT Toronto.

20. The CBC submitted that CTVgm's proposal conflicts with both the general principle against concentration of ownership and with the Commission's specific policy against the ownership of more than one conventional television station in the same language in a market. It argued that the onus is clearly on CTVgm to demonstrate that "the advantages of any such concentration clearly outweigh the disadvantages, and that the transaction is in the public interest." The CBC submitted that CTVgm must also demonstrate that the multiple exceptions it requests to the Commission's Common Ownership Policy are justified. In the CBC's view, CTVgm has not met these tests.

21. Finally, the CBC submitted that CanWest's situation is significantly different from that proposed by CTVgm. It argued that CTVgm is proposing to own two local conventional television stations in the same market, in direct violation of the Commission's Common Ownership Policy. It was of the view that CanWest's situation with CHCH-TV is not analogous since, even though CHCH-TV is available in Toronto, it is clearly a Hamilton station with substantial commitments to serve Hamilton. The CBC argued that the same is true in Vancouver, since the CH service is provided by CHEK-TV Victoria, which is clearly a Victoria station. Further, in Calgary and Edmonton, the CH service is received as a distant signal from Red Deer. As such, the Red Deer station is not a local station in Calgary or Edmonton and has no local commitments to those markets.

22. As noted previously, the rationale for exceptions to the Commission's Common Ownership Policy has generally rested on the need for strong, locally focused programming for smaller communities located adjacent to large urban centres. The Commission notes that none of the Citytv stations are located in smaller communities located adjacent to large urban centres, but are rather located in the large urban centres themselves. The Commission concurs with the CBC's position that CanWest's situation with its CH stations is significantly different from that proposed by CTVgm.

23. The Commission also concurs with the CBC's submission that the proposed transaction would result in a concentration of ownership that would have an unacceptable impact on the plurality and diversity of voices in the English-language market.

24. The financial viability of stations has also been a key consideration in cases where the Commission has made exceptions to its Common Ownership Policy. The applicant argued during the public hearing that the Citytv stations have been experiencing a significant decline in revenue since 2003 and are in a failing financial position. While the Commission accepts that the Citytv stations experienced a decline in revenues between 2003 and 2005, profits before interest and taxes for these years nevertheless remained positive, and even increased in 2005 from 2004. Revenues in fact actually showed a slight increase in 2006. On the other hand, the Commission does recognize that the Citytv stations reported a loss before interest and taxes in that same year. However, given that the television industry and the Citytv stations were profitable in previous years, that this is the first loss before interest and taxes recorded by Citytv, and that this loss is consistent with the overall performance of the television industry in general for the 2006 year, the Commission is not convinced that the decline in revenues or this one-year loss are indicative that the Citytv stations are in a failing position.

25. In light of the above, the Commission finds that the acquisition of the Citytv stations by CTVgm would not conform to the Common Ownership Policy or fit any of the exceptions to that policy established by the Commission. Further, the Commission does not consider that CTVgm has provided any persuasive rationale as to why the Commission should allow the acquisition of the Citytv stations on any other basis.

26. Therefore, the Commission considers it appropriate to require that, as a **condition of approval**, the Trustee file with the Commission, within 30 days of the date of this decision, a plan acceptable to the Commission such that the Citytv group of stations may be divested without being at any time subject to the control of CTVgm. The Citytv stations are CKVU-TV Vancouver; CKAL-TV Calgary; CKEM-TV Edmonton, CHMI-TV Portage La Prairie/Winnipeg; and CITY-TV and CITY-DT Toronto. This condition is set out in the conclusion to this decision. As part of this plan, the Commission expects the Trustee to provide a time frame by which the assets of the Citytv stations will be divested.

27. As noted above, CTVgm indicated that it would divest of CHUM's CBC-affiliated television station CKX-TV Brandon, ACCESS Alberta – The Educational Station, and the A-Channel group of conventional television stations if the application were approved. It would also divest of the specialty services known as Canadian Learning Television and Sex-TV: The Channel, as well as the shares currently held in MusiquePlus Inc. The Commission is of the view that any or all of these undertakings may be retained at CTVgm's discretion.

28. CTVgm's purchase of CKX-TV Brandon does not raise concerns with respect to the Common Ownership Policy.

29. The Commission is also of the view that the Common Ownership Policy does not apply to ACCESS Alberta — The Educational Station since that policy was developed for commercial broadcasters.

30. The Commission notes that each of the A-Channel stations has experienced a loss before interest and taxes over the last five years and is convinced that these sustained losses indicate that these stations are in a failing position.

31. Two of the A-Channel stations – CHRO-TV-34 Ottawa and CIVI-TV Victoria – are located in markets also served by CTV stations. The Commission notes, however, that an exception to the Common Ownership Policy for CHRO-TV in Ottawa was made in Decision 96-542 when the station was purchased by BBS Ontario Incorporated (BBS). At that time, BBS also controlled CJOH-TV Ottawa. In Decision 96-542, the Commission stated, in view of the station's "recent ratings and financial record, the

Commission considers that ensuring that the station remains in operation as a viable undertaking offering a valued, local service, outweighs any concerns with regard to the common ownership of CHRO-TV and CJOH-TV." The Commission considers that the same rationale is applicable in the context of the common ownership of CHRO-TV-34 and CJOH-TV Ottawa by CTVgm.

32. The Commission and its predecessor, the Board of Broadcast Governors (BBG) have approved exceptions to the Common Ownership Policy in order to allow one party to own a station in both Vancouver and Victoria since 1963 when the BBG approved the common ownership of CHEK-TV Victoria and CHAN-TV Vancouver. The Commission is of the view that the common ownership by CTVgm of CIVI-TV Victoria and CIVT-TV Vancouver is in accordance with previous exceptions granted in that market.

33. The Commission therefore finds that CTVgm may retain the A-Channel stations, at its discretion.

34. The retention of CHUM specialty services by CTVgm does not raise concerns, given that the Common Ownership Policy applies only to conventional television stations.

35. As a **condition of approval**, CTVgm must notify the Commission, within 30 days of the date of this decision, of the CHUM assets that it intends to retain from the following list of assets approved by the Commission for acquisition by the applicant: the A-Channel stations, CKX-TV, ACCESS Alberta – The Educational Station, Canadian Learning Television, Sex-TV: The Channel and MusiquePlus Inc.

Value of the transaction and associated benefits

36. 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 (the 1999 Television Policy and maintained in Broadcasting Public Notice 2007-53, the "2007 Television Policy"), and of 6% for radio undertakings (the Commercial Radio Policy).

37. CTVgm's purchase price for the shares amounts to $1,365 million. CTVgm determined this value to be the value of the transaction on which they proposed a tangible benefits package of $103.5 million.

38. In most of the previous transactions, the value of the transaction was equivalent to the purchase price for the shares plus the value of assumed debt. In assessing the value of the transaction, CTVgm excluded CHUM's long-term debt of $270 million and operating leases and other commitments of $65.5 million. The latter, as financing alternatives, are considered as debt. The Commission has therefore determined that the value of the transaction should take into account these assumed liabilities and concludes that the revised value of the transaction amounts to $1,700.5 million.

39. CTVgm has used the valuation report prepared by Merrill Lynch as a basis for allocating their value of the transaction of $1,365 million for benefits purposes between CHUM's assets:

- Radio: $450 million;
- Television to be retained: $765 million; and
- Assets to be divested: $150 million.

40. This allocation by CTVgm of their value of the transaction is based on the respective proportion of the value of these assets in the Merrill Lynch valuation, excluding non-regulated assets. Merrill Lynch has calculated the value of the assets using both a precedent transaction analysis and a discounted cash flow analysis. For each category of assets, they determined a range for the value under each method and chose the value that was the highest.

41. At the hearing and in the deficiency process, the Commission discussed with CTVgm the methodology used in assessing the value of the assets including, for example, the choice of comparable transactions and the adjustments for both analysis methods used by Merrill Lynch.

42. Using the Merrill Lynch report and the information provided by CTVgm in its application, the Commission determined the enterprise value of CHUM's assets as of 31 August 2006 based on the facts known at that time and on the following:

- a precedent transaction analysis was used;
- the valuation was based on metrics adjusted to make the results representative of expected future operations;
- Earnings Before Interest Taxes Depreciation and Amortization (EBITDA) multiples were used in all cases with the exception of CKX-TV and Sex-TV: The Channel, where revenue multiples were used;
- EBITDAs were adjusted to take into account one-time charges, savings from restructuring, and an increase in foreign programming;
- synergies for the A-Channel stations were calculated from CTVgm's $16 million synergies in expenses and $3 million in revenues for Citytv;

- a value was assigned to the unlaunched Calgary radio station based on its projected EBITDA for year seven at the time of application for the licence;
- multiples for CKX-TV, ACCESS Alberta – The Educational Station, Canadian Learning Television, Sex-TV: The Channel, MusiquePlus Inc. and the radio undertakings were based on Merrill Lynch multiples; and
- multiples for the A-Channel stations, the Citytv stations, mature specialty and digital specialty services were determined based on their adjusted EBITDA margin, and taking into consideration the EBITDA margin of the industry for the broadcast year 2006.

43. After taking into account the foregoing factors, the Commission determined the respective allocation percentages of the enterprise value of the transaction between the assets and found that they were not materially different from those proposed by CTVgm. This being the case, the Commission accepts CTVgm's proposed percentages.

44. The table below provides the CTVgm adjusted value to reflect the allocation of assumed debt, operating leases and other commitments using CTVgm's allocation percentages on the revised value of the transaction of $1,700.5 million.

Value of the Transaction and Associated Benefits

$ million

	CTVgm Value of the transaction	CTVgm Benefits	CTVgm Adjusted value	Revised benefits
Television assets to be retained	(Note 1) $765.0	$76.5	$952.3	$95.2
Radio assets	$450.0	$27.0	$561.2	$33.7
Assets to be divested	(Note 2) $150.0	$15.0	$187.0	$18.7
Total regulated assets	$1,365.0	(Note 3) $118.5	$1,700.5	$147.6

(Note 1) Includes Citytv stations, mature specialty services and digital specialty services.
(Note 2) Includes A-Channel stations, CKX-TV, ACCESS Alberta – The Educational Station, Canadian Learning Television, Sex-TV: The Channel and MusiquePlus Inc.
(Note 3) Benefits associated with CTVgm television assets to be retained and radio assets amount to $103.5 million.

45. If CTVgm decides to sell assets that the Commission has allowed it to purchase, the Commission will not require CTVgm to pay benefits on those assets. The Commission will calculate the benefits on individual assets based on the method set out in Appendix 1 to this decision. The Commission cannot set out the specific value for each asset because certain information relating to the value of individual undertakings is confidential. The Commission has, however, provided the results of the calculations to CTVgm in a letter sent today.

Tangible benefits

46. With respect to television, as stipulated in the 1999 Television Policy, when the benefits policy applies, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of the transaction, as accepted by the Commission. Such benefits should be directed to the communities served and to the broadcasting system as a whole. For radio, as stipulated in the Commercial Radio Policy, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 6% of the value of the transaction.

47. CTVgm proposed a tangible benefits package of which approximately 74% would be allocated to television, including both conventional and specialty services, and 26% to radio. Of the television benefits, 85% would be allocated to programming initiatives and the remaining 15% to social benefits. This spending would be incremental to existing requirements, including all outstanding spending obligations associated with previous ownership transactions.

48. The Commission considers that the model used to apportion tangible benefits to television (74%) and radio (26%) is appropriate. It further considers that the model used to apportion the television benefits to incremental programming initiatives (85%) and social benefits (15%) is appropriate and consistent with past practice.

49. However, the Commission considers that its decision to require divestiture of the Citytv stations and its findings with respect to the value of the transaction will have a substantial effect on the tangible benefits package and therefore necessitate the filing of a revised tangible benefits package, as it relates to television.

50. Accordingly, as a **condition of approval**, the Commission requires CTVgm to file, within 30 days, a revised benefits package related to television and acceptable to the Commission that reflects the value of the transaction, as determined by the Commission in this decision, and the method for calculating the value of the transaction of individual assets set out in Appendix 1 to this decision. This condition is set out in the conclusion of this decision.

Television tangible benefits: programming

51. As with Decision 2000-747, in which the Commission approved the acquisition of CTV Inc. by BCE Inc. (the BCE-CTV transaction), a key element of the applicant's benefits package is the creation of a "one-stop shopping" opportunity that will enable independent producers to approach CTVgm for everything from a licence fee to Internet rights, from a distribution advance to equity investment. According to the applicant, this would relieve independent producers of the sometimes burdensome task of approaching several different agencies in order to put these elements into place, and instead, would allow producers to focus on the creative process. The Commission considers this approach to the television benefits to be acceptable.

52. Under the applicant’s proposal, the tangible benefits associated with the acquisition of television undertakings would be directed to the development, production and promotion of new priority programming, i.e., Canadian programs from under-represented categories such as drama, long-form documentary, and music and dance, as defined in the 1999 Television Policy.

53. The application weighted the on-screen initiatives heavily towards the creation of drama for priority programming, with some emphasis on music-oriented programming, based on the proposed acquisition of the Citytv stations. Given the Commission’s decision regarding divestiture of the Citytv stations, the applicant may wish to reconsider these initiatives and file revisions as part of the revised benefits package.

Incrementality

54. The applicant committed to ensure that all production associated with its benefits package related to television is incremental, i.e., above and beyond the base level of expenditures on Canadian programming for the CHUM television services.

55. For the conventional television stations being acquired, the applicant proposed to measure incrementality of the programming benefits using the Citytv stations’ expenditures on priority programming as a base. For specialty services, the applicant indicated that it would accept the following condition of licence to ensure that any benefits spending would be incremental:

> For the purpose of fulfilling the Canadian programming expenditure requirement [as set out in the conditions of licence for each respective CHUM 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 CTVgm’s acquisition of effective control of CHUM.

56. Given the Commission’s determination regarding divestiture of the Citytv stations, the Commission directs the applicant to provide, as part of its benefits package filing, expenditure data to determine the base level of spending in order to measure the incrementality of the benefits initiatives for the conventional television stations that it intends to retain. CTVgm should also provide a rationale for the approach to be used to determine incrementality.

57. 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. The Commission requires CTVgm, as a **condition of approval**, to apply, within 30 days, to add this condition to the licences of the CHUM specialty services. This condition is set out in the conclusion to this decision.

58. The Commission further directs the applicant to recalculate the hours of incremental priority programming to be supported by the tangible television benefits given the change in value of the transaction. The applicant should respond to the Commission within 30 days.

59. Further, the Commission directs the applicant to file, in each of the next seven years, a detailed audited report concurrent with the filing of the annual return for CTV Television Inc., setting out the incremental spending on programming benefits as compared to the actual expenditures on the base level amount of eight hours per week of priority programming.

Administration

60. In response to the interventions and to questioning at the public hearing, CTVgm argued that self-administration of the funds and the "one-stop shopping" method accepted for the BCE-CTV transaction has proved to be successful and beneficial to the broadcasting system and was generally supported by the production sector. CTVgm noted that all of the money in the benefits package except for "Canada Rocks for the Cause" (i.e., televised multi-act music events to raise awareness and/or funds for charity and to feature predominantly Canadian artists) would be allocated to third parties, namely independent television producers.

61. During the public hearing, the Panel questioned CTVgm on whether it intended to charge administrative fees for overseeing the incremental priority programming initiatives. The applicant responded that it intended to allocate a maximum of two million dollars over the seven years to administering the proposed incremental priority programming initiatives. The Commission considers that, when approval has been given to a licensee to self-administer benefits spending, it is inappropriate for any administrative fees to be charged. Accordingly, no administrative fees may be charged by CTVgm.

Television tangible benefits: social

62. CTVgm proposed to allocate 15% of the television tangible benefits to social and industry initiatives as grants to be disbursed to third-party community and other organizations in order to be of benefit to the Canadian broadcasting system and to the Canadian public. Interveners expressed general support for the proposed social benefits, which were divided into six funding envelopes, as follows:

- *Diversity*: To advance the presence, participation and portrayal of under-represented groups
- *Industry Connections*: Connecting new and emerging talent with mentors and seasoned professionals
- *Local and Regional Film Festivals and Initiatives*: Support to Canada's film festivals
- *Media Education*: Media literacy curricula for students in kindergarten to Grade 12

- *Broadcast-related Research*: Third-party education and research studies as the Commission deems valuable, according to section 14(1) of the Act
- *Broadcast Preservation and Heritage*: Support to preserve, celebrate and study Canada's broadcasting heritage

63. The Commission is satisfied with CTVgm's approach to social benefits initiatives, and in particular the six funding envelopes proposed. Given the change in the overall value of the transaction, CTVgm may wish to review its social benefits package as part of its revised benefits package. Moreover, the Commission directs the applicant, as a part of its revised benefits package, to submit information on the potential recipients of the funds within the six envelopes.

Radio tangible benefits

64. CTVgm has proposed a tangible benefits package for radio that is consistent with the Commission's established radio benefits policy outlined in the Commercial Radio Policy. A description of each initiative, as well as the amount allocated and the schedule of payment, is set out in Appendix 2 to this decision.

65. Several interveners commented on CTVgm's proposed radio tangible benefits package. Although generally supportive, some suggested that the funds would be better spent on such initiatives as a community media foundation, support for existing community radio, broadcast education programs, support for provincial, territorial and regional music associations, programs addressing market access issues for the independent recording sector, or songwriters.

66. Others suggested that the value of the transaction should be adjusted, thereby affecting the overall level of benefits including those associated with radio. During the hearing CTVgm noted that a recalculation of the costs associated with the purchase of CHUM's radio assets and the resulting increase in tangible benefits would be applied on a *pro rata* basis.

67. The Commission is satisfied that the organizations to which the proposed radio tangible benefits will be directed are eligible under the Commission's current radio benefits policy. Adjustments to the value of the transaction and subsequent adjustments made to the value of the radio sector tangible benefits package will be applied on a *pro rata* basis. The Commission reminds CTVgm that payment of these benefits is incremental to CHUM's current commitments to Canadian content development and Canadian talent development.

68. Given the magnitude of the benefits involved, the Commission directs CTVgm to submit in each of the next seven years with its annual return, a detailed report on the manner in which these tangible radio benefits have been disbursed.

Programming issues

69. The Commission is of the view that this application raises two main issues with respect to programming: editorial independence and programming diversity.

70. Section 3(1)(i)(iv) of the Act states that the programming provided by the Canadian broadcasting system should

> provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.

71. Section 3(1)(d)(ii) of the Act states that the Canadian broadcasting system should

> encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view.

72. In response to the interventions and to questioning from the hearing panel, CTVgm indicated that it would accept certain conditions of licence to address concerns regarding the possibility of decreased diversity of voices in the Canadian media landscape and fewer programming choices for Canadians. These are discussed below.

Cross-ownership of media: editorial independence

73. CTVgm proposed to extend the application of its existing Statement of Principles and Practices (the Statement), to which it currently must adhere as a condition of licence, to additional services it acquires that broadcast news. The Statement, which is set out in Appendix 1 of Decision 2001-457, acknowledges the importance of diversity of voices in the context of cross-ownership of media, and outlines principles and practices for safeguarding diversity of voices in news. The Statement requires the independent management of news departments and the maintenance of separate presentation structures.

74. The Commission requires CTVgm, as a **condition of approval**, to apply, within 30 days, for conditions of licence that extend the application of the Statement to the newly-acquired services that broadcast news.

Television: programming diversity

75. CTVgm proposed that there would be no programming overlap between the Citytv stations and the CTV stations, with the exception of no more than 20 hours per year of star-system-enhancing Canadian programming. It also proposed, by condition of licence, that at least 75% of all priority programming broadcast by the licensee over the broadcast year would be produced by independent production companies. Given its decision to require divestiture of the Citytv stations, the Commission recognizes that arguments may

be made regarding the fairness and applicability of these proposed conditions of licence. Therefore, in the event that CTVgm wishes to retain the A-Channel stations, it must, as a **condition of approval**, submit to the Commission within 30 days, a new proposal concerning its proposed conditions of licence regarding programming overlap between the CTV stations and the A-Channel stations, and independent production, that is acceptable to the Commission.

76. CTVgm further proposed a condition of licence to ensure separate management of programming between its conventional television station groups to encourage programming diversity. The Commission is satisfied with the proposed condition and requires CTVgm, as a **condition of approval** to apply, within 30 days, for such a condition of licence, if it wishes to retain ownership of the A-Channel stations.

The 5:1 rule for the carriage of Category 2 digital specialty services by BDUs

77. Section 18(14) of the *Broadcasting Distribution Regulations* states:

> Except as otherwise provided under a condition of its licence, a licensee shall, for each Category 2 service of a related programming undertaking distributed by the licensee, distribute at least five Category 2 services of any unrelated programming undertakings in the licensed area.

78. For the purposes of this section (the 5:1 Rule), a “related programming undertaking” is a programming undertaking of which the licensee or an affiliate, or both, controls more than 10% of the total shares issued and outstanding. A Category 2 service is defined as including not only Category 2 digital pay and specialty services, but also video-on-demand services and pay-per-view services that began distribution after 1 February 2001.

79. Upon approval of this application, the Category 2 services currently owned by CHUM (the CHUM services) would be considered Category 2 services of a related programming undertaking under the 5:1 Rule when distributed by the Bell ExpressVu direct-to-home (DTH) BDU. Continued carriage of the CHUM services, in addition to other related programming undertakings that it currently distributes, would therefore result in the Bell ExpressVu DTH BDU being non-compliant with the 5:1 Rule, if it were to continue to offer its current line-up of Category 2 services.

80. In order not to disrupt the service offered by Bell ExpressVu, the applicant requested that an exception be made to the 5:1 Rule, as it relates to the carriage of the CHUM services, for a period of three years. During the hearing, the applicant clarified the proposed terms for this exception as follows:

- the CHUM services would not be counted for purposes of determining compliance with the 5:1 Rule;

- no more Category 2 services of a related programming undertaking would be added until the end of the three-year period or such time as there is full compliance with the 5:1 Rule, whichever is earlier;
- the high definition version of an existing Category 2 service would be counted as a separate service for the purpose of the 5:1 Rule; and
- the exception would apply only to the Bell ExpressVu DTH service and not to other related BDUs.

81. The Commission notes the applicant’s request and the clarifications provided during the hearing. However, Bell ExpressVu was not before the Commission at this hearing. If Bell ExpressVu wishes to be granted an exception to the 5:1 Rule, it must itself submit an application to the Commission. Such an application would then be considered within an appropriate public process.

Other issues

Radio

82. CTVgm will purchase all of CHUM’s 34 conventional radio assets, including 14 AM and 20 FM radio programming undertakings in addition to CHUM’s interest in its unlaunched terrestrial subscription radio service and 13 unlaunched transitional digital radio undertakings. CTVgm does not currently own any radio undertakings. The Commission’s analysis has shown that CHUM’s conventional radio services are in compliance with their respective conditions of licence as well as the *Radio Regulations, 1986*. CTVgm stated in the application that it will operate CHUM’s radio undertakings under the same terms and conditions to which they are currently bound. This position was reiterated at the hearing. The Commission notes CHUM’s current commitments to local programming and the promotion of emerging artists, as filed in this proceeding.

83. Moreover, at the hearing, the expectations outlined in the Commercial Radio Policy were raised with CTVgm. The Commission placed emphasis on the changes made to the framework for developing Canadian content, support for emerging artists and requirements for local programming. In reply, CTVgm acknowledged its understanding of the new funding framework for Canadian content development and undertook to provide the Commission with information on the operations of CHUM’s radio programming undertakings. The Commission expects that CTVgm will continue to offer the levels of local programming outlined in its submission and to continue CHUM’s support of emerging artists both through and beyond airplay. It encourages CTVgm to take a role within the industry and with stakeholders in developing ongoing support for emerging artists.

Conclusion

84. In light of the above, the Commission **approves**, subject to the fulfillment of the **conditions of approval** set out below, the application by CTVglobemedia Inc. (CTVgm), on behalf of CHUM Limited (CHUM), to transfer effective control of CHUM to CTVgm through its wholly-owned subsidiary 1714882 Ontario Inc. The transfer will be effected through the transfer of all of the common shares of CHUM, currently in trust, to 1714882 Ontario Inc.

Conditions of approval

1. The Trustee shall, within 30 days of the date of this decision, file with the Commission a plan acceptable to the Commission such that the Citytv group of stations may be divested without being at any time subject to the control of CTVgm. The Citytv stations are CKVU-TV Vancouver; CKAL-TV Calgary; CKEM-TV Edmonton, CHMI-TV Portage La Prairie/Winnipeg; and CITY-TV and CITY-DT Toronto. As part of this plan, the Trustee must provide a time frame by which the assets of the Citytv stations will be divested.

2. CTVgm must notify the Commission, within 30 days of the date of this decision, of the CHUM assets that it intends to retain from the following list of assets approved by the Commission for acquisition by the applicant: the A-Channel stations, CKX-TV, ACCESS Alberta – The Educational Station, Canadian Learning Television, Sex-TV: The Channel and MusiquePlus Inc.

3. CTVgm shall, within 30 days of the date of this decision, submit a revised benefits package related to television acceptable to the Commission that reflects the value of the transaction, as determined by the Commission in this decision, and the method for calculating the value of the transaction of individual assets set out in Appendix 1 to this decision.

4. CTVgm shall, within 30 days of the date of this decision, apply for conditions of licence for the relevant undertakings to the following effect:

   - that 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 CTVgm's acquisition of effective control of CHUM for the purpose of fulfilling the Canadian programming expenditure requirements as set out in the conditions of licence for each CHUM specialty service;

   - that CTVgm's existing Statement of Principles and Practices, which provides safeguards for the independent management of news departments and the maintenance of separate presentation structures, be extended to the additional services that broadcast news that are acquired as a result of this transaction;

- that if CTVgm wishes to retain the A-Channel stations, it shall submit a new proposal concerning its proposed conditions of licence regarding programming overlap between the CTV stations and the A-Channel stations, and independent production; and

- that management of programming between any CHUM conventional television stations and the CTV television stations be kept separate.

Secretary General

Related documents

- *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

- *Licence renewals for the television stations controlled by CTV*, Decision CRTC 2001-457, 2 August 2001

- *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 1997

- *Disaffiliation of CHRO-TV Pembroke from the CTV Television Network; Addition of a transmitter of CHRO-TV at Ottawa and addition of a transmitter of CJOH-TV Ottawa at Pembroke – Approved*, Decision CRTC 96-542, 26 August 1996

This decision is to be appended to each 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 1 to Broadcasting Decision CRTC 2007-165

Method for calculating the value of individual assets

The Commission has determined that, if CTVgm were to pay benefits on the total value of the transaction, including the Citytv stations and MusiquePlus Inc., the tangible benefits would amount to $147.6 million. To determine the portion of the value of the transaction attributable to each asset included in “Television assets to be retained” and “Assets to be divested,” as set out in the letter referred to in paragraph 45:

1. Total the enterprise values as submitted by CTVgm of each asset included in “Television assets to be retained” and “Assets to be divested,” as applicable.

2. Calculate the percentage that the enterprise value for each asset represents of the total enterprise value of “Television assets to be retained” and of “Assets to be divested,” as applicable.

3. Allocate the “Revised benefits” referred to in paragraph 44 to each asset included in “Television assets to be retained” and included in “Assets to be divested” based on the percentages calculated in 2 above.

4. To determine the value of the transaction for each asset, divide the associated benefit calculated in 3 above by 10%.

Appendix 2 to Broadcasting Decision CRTC 2007-165

Radio tangible benefits

Initiative	Amount	Description
Radio Starmaker Fund / Fonds RadioStar	$16,850,000	Consistent with the Commission's tangible benefits policy set out in the *Commercial Radio Policy 2006* (radio benefits policy), CTVgm will commit $16,850,000 to the Radio Starmaker Fund / Fonds RadioStar over 7 consecutive broadcast years. Though all contributions will be effectively made to the Radio Starmaker Fund, 20% will be redistributed by Starmaker to the Fonds RadioStar.
Discretionary: • Aboriginal Voices Radio (AVR) • Canadian Academy of Recording Arts and Sciences (CARAS) • Canadian Music Week (CMW)	$5,616,667	Consistent with the established radio benefits policy, CTVgm will commit the remainder of its tangible benefits ($5,616,667) to the following initiatives: • $1,221,063 to Aboriginal Voices Radio Inc. (AVR) to be disbursed in equal amounts over the course of 7 consecutive broadcast years upon approval of the application. Funds would be used to mitigate the costs incurred in supporting the creation and promotion of audio content for broadcast on AVR stations. • $1,221,063 to the Canadian Academy of Recording Arts and Sciences (CARAS) and their national music in schools initiative. Funding will be disbursed in equal amounts over the course of 5 consecutive broadcast years upon approval of the application. Funding will be provided to support two awards: "Allan Waters Humanitarian

		Award" to Canadian music artists who have made an exemplary community commitment; and "Fred Sherratt Award" to students enrolled in eligible music programs. • $3,174,541 to a proposed CHUM Music Fest at Canadian Music Week (CMW). Funding will be disbursed in equal amounts over the course of 5 consecutive broadcast years upon approval of the application. The music showcase at CMW will focus on Canadian emerging artists with a known "headline star" who will all be Canadian.

Dissenting opinion of Commissioner Elizabeth Duncan

I disagree with my colleagues in the above decision only with respect to the Citytv stations. I believe CTVgm is the best purchaser of these stations. Currently CTVgm says it is forced by U.S. program suppliers to purchase more programming then it can air. Purchasing the Citytv stations would allow CTVgm to better spend its programming dollars increasing the efficiency of both CTVgm and the Citytv stations. Instead of purchasing surplus programming that sits on a shelf, these funds would be directed towards the purchase of programming for Citytv. I can not think of a potential purchaser that would be able to capitalize on this economy of scale.

CTVgm committed to revitalize the Citytv stations and to restore their original programming philosophy. CTVgm also committed to developing a truly distinct service – one that would appeal to a younger urban audience. Viewers would have benefited from true diversity. I am concerned that another purchaser will find itself in the same position as CHUM. As we heard during this process, even CHUM's flagship station CITY-TV Toronto was forced to compromise its original programming objectives and air middle of the road programming in order to shore up the financial situation at CHUM's television operations.

CTVgm offered to accept a number of conditions of licence to ensure and protect diversity in the market. They committed to separate management of programming and zero overlap in programming between any CTV station and any Citytv station on an annual basis, with a small 20 hour per year exception. They committed as well to separate and independent news management and presentation structures between CTV and the Citytv stations to ensure continued diversity in news coverage.

CTVgm has a proven record with respect to maintaining editorial separation between its various news interests and proposed extending the Statement of Principles and Practices currently in place between CTV and *The Globe and Mail* and between CTV and the newspaper operations of its minority shareholders to the Citytv stations/Cable Plus 24/CHUM radio stations, the CTV Stations/CTV Newsnet/Business News Network.

In addition CTVgm indicated a willingness to accept a distinct nature of service for the Citytv conventional stations specifying that they have as a primary target audience an urban audience ages 18-49.

With respect to ownership policy the Commission stated in *Building on Success – A Policy Framework for Canadian Television*, Public Notice CRTC 1999-97:

> 17. The Commission will continue its current policy which generally permits ownership of no more than one over-the-air television station in one language in a given market.

> 18. This policy ensures the diversity of voices in a given market, and helps to maintain competition in each market. Most of the participants indicated that the Commission's current approach worked well and did not recommend any change.

The use of the word "generally" suggests that the policy contemplates exceptions.

Indeed there have been numerous exceptions to this policy, known as the "one station / one market" policy. The majority of these exceptions were as a result of poor financial performance. In this regard, CTVgm submitted the Citytv stations are in serious financial difficulty and the situation is deteriorating.

Further, most, if not all, of these exceptions date back prior to 2002. The world of entertainment and communications has changed considerably since then. I agree with CTVgm's position that this policy, which dates back prior to 1999, should be considered in light of market realties today.

As stated, this policy ensures the diversity of voices in a given market and helps to maintain competition. Growth of the Internet has vastly increased the choices available to Canadians, and it continues to grow and evolve. Viewers today are able to access multiple media sources both regulated and unregulated, including specialties, PPV, VOD, print and the Internet. The Internet provides Canadians with a multitude of editorial and news voices and programming alternatives.

Access to these various sources adds to the diversity of voices and competition.

I agree as well with CTVgm's position that in applying the "one station / one market" policy we have to consider the changing technological realities, consistent with our mandate under the *Broadcasting Act*.

As for the concern about the purchasing power that would accrue to CTVgm, I note that CanWest announced its proposed purchase of Alliance Atlantis subsequent to announcement of CTVgm's proposed purchase of CHUM, an indication I would say that they do not feel unduly threatened. I also note that, while CanWest filed an intervention, they did not oppose the transaction and did not ask to appear at the Public Hearing.

As pointed out in CTVgm's reply of May 2, the Competition Bureau issued a no action letter following its assessment of this application.

While I do have a concern about concentration of market power with respect to program buying and advertising, I believe that this concern is more than offset by the fact consumers would benefit from increased choice in the form of a truly unique Citytv service and that at this point in time it is difficult, if not impossible, to identify a buyer better positioned to take on the challenge. I am comforted by the Competition Bureau's assessment, the fact the Commission is able to impose conditions of licence and the extensive conditions of licence proposed by CTVgm.

The proposed sale of the A-Channel stations would bring a new broadcaster into the market.

Many interventions were received from writers, actors and others in support of CTVgm’s application.

Representatives of Citytv, including Jim Waters and Fred Sherratt, appeared at the hearing in support of the application and CTVgm as the purchaser and appeared convinced CTVgm would restore the Citytv stations to their former position.

CTVgm is highly regarded as a successful broadcaster with a reputation of honoring its commitments. I think the commitment of the senior executives of CTVgm to the revitalization of CHUM’s Citytv stations is also a key consideration.

Dissenting opinion of Commissioner Stuart Langford

I disagree with that part of the majority decision in this matter which denies CTVgm's application to buy the Citytv stations in Toronto, Winnipeg, Calgary, Edmonton and Vancouver. By denying this aspect of the application, the majority, in my respectful opinion, has fettered its discretion unnecessarily by adopting an overly rigid interpretation of a Commission policy directive rather than relying upon the far more flexible approach made available to it by Parliament in paragraph 3(1)(i)(iv) of the *Broadcasting Act* (the Act).

The result, I believe, will be to deprive Canadians of the opportunity to benefit from the existence of a generously funded, independently managed and programmed, near-national, English-language, over-the-air, conventional television service. That is a shame.

In denying CTVgm's application to own and operate Citytv's five stations, the majority has fallen into two traps. First, it has raised the spectre of unfair competition despite the fact that after a thorough six-month-long investigation, the Competition Bureau found no grounds for such a conclusion. Second, the majority has adopted a strict literal reading of the one-market-one-station provisions first adopted in a 1963 Board of Broadcast Governors (BBG) decision and reaffirmed both in subsequent Commission decisions as well as the 1999 Television Policy. In doing so, the majority appears to have confused the means suggested in the policy with the end the policy was intended to achieve.

The end, legislated by Parliament in the Act, is diversity of voices; the prohibition against owning more than a single station in a given market was the BBG and Commission's suggested means of achieving that end. It is not, however, the only means imaginable.

In its application to acquire most of CHUM's assets, CTVgm, used its imagination and, in my view, devised a different but equally acceptable means of attaining the "diversity of voices" goal in the Act. That goal, to quote paragraph 3(1)(i)(iv), is to "provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern." CTVgm proposed to separate totally the management and programming elements of CTV and CHUM, thereby guaranteeing that viewers watching Citytv and CTV programming would be unable to detect any connection between the services.

Here are the safeguards, or "reasonable provisions," to quote the Act, that CTVgm committed to accept so as to ensure that future viewers watching CTV and Citytv, should its application be approved, would be "exposed to the expression of differing views on matters of public concern."

- a condition of licence (COL) stipulating that Citytv's nature of service must be "separate and distinct from the programming to be broadcast on any CTV conventional station." CTVgm guaranteed that, but for the odd exception, for example, coverage of a major unexpected event, absolutely none of the programming aired on Citytv stations would be duplicated on CTV stations.

- a COL stipulating that the owners of CTV and Citytv operations, "shall maintain separate management of programming as between the Citytv conventional television stations on one hand and the CTV conventional television stations on the other."

- A COL ensuring "the existence of diverse and distinct editorial and news reporting voices" by guaranteeing "the independence and separation of the management of news departments" owned and/or controlled by CTVgm or any of its shareholders. CTVgm also promised to guarantee separate news presentations on the CTV and Citytv stations.

No doubt, the scope of the exception to the Commission's common ownership policy, requested by CTVgm in seeking to acquire the five Citytv stations is unprecedented. Equally unprecedented, however, are the safeguards guaranteeing true diversity of voices that CTVgm has agreed to accept. And it is vitally important to remember that these safeguards will be cut in stone, will forever form part of the five Citytv licences and obligations, unalterable without a full public process followed by Commission approval. The Commission has granted any number of exceptions to its one-station-one market policy in the past, but has never gone to such lengths to ensure that the goal of diversity of voices is permanently and inalienably guaranteed.

The obvious question CTVgm's proposed COLs beg is: So what? The majority decision goes far beyond cumbersome COLs. It guarantees separation of operations and diversity of voices by insisting that CTV stations and Citytv stations are owned and controlled by different people. What solution could be cleaner, more effective and better in keeping with the Act's preoccupation with "differing views on matters of public concern" than that? All other things being equal, I would have no hesitation in agreeing with such a proposition. Different owners should guarantee different voices. All other things, unfortunately, are far from equal.

In its *Proposed Conditions of Licence/Commitments,* filed on May 2, 2007, CTVgm committed to a "benefits" package totalling $130.4 million, based on a value of the transaction of assets (including the five Citytv stations) retained, of $1,635 million. Using the evaluation methodology set out in the majority decision, those numbers could go up, but for my purposes, CTVgm's numbers tell the tale accurately enough. Of the $130.4 million in total benefits, CTVgm committed to spend $80 million on additional conventional and specialty television programming and program development.

Eighty million dollars is nothing to sneeze at, particularly when one keeps in mind that every cent is to be spent on CHUM stations; none of it will be spent on CTV programming. Also, because of the way CHUM specialties and conventional stations work together, because of the programming synergies that exist between them, almost every cent of the $80 million will have a direct impact on the quality of the programs Canadians watch when they tune to a Citytv channel.

Thus, the CTVgm proposal to retain the five Citytv stations not only guarantees a wholly separate and diverse program schedule for them, but puts more than enough money on the budgeting table to ensure that the diverse programs produced will be both numerous and of high quality. The majority's divestment solution, unfortunately, does no such thing.

The asset evaluation study on the record of this proceeding puts an enterprise a value on the five Citytv stations of anywhere between $74 and $149 million. Based on the 10% rule, if a new buyer is found for the five Citytv stations ordered sold by today's majority decision, that new buyer will be offering a benefits package of somewhere between $7.4 and $14.9 million. That is a long way from $80 million and is unlikely to produce much in the way of quality Canadian programming.

Unlikely, as well, is the notion that a new buyer for the five Citytv stations will volunteer to increase the hours of local programming shown on them and to invest the millions of dollars needed to produce those extra hours. Yet, that is precisely what CTVgm has committed to do should it be allowed to retain the Citytv stations. It has agreed to raise local programming commitments in Winnipeg from 15 to 17.5 hours, in Calgary from 31.5 to 35 hours and in Edmonton from 31.5 to 34.5 hours. It will retain the already high levels in Vancouver and Toronto and agree to accept all levels as COLs.

Every member of the panel hearing CTVgm's application, to quote William Butler Yeats, "cast a cold eye" on the applicant's initial proposal. Each in turn pushed Mr. Fecan and his team hard on their plans for the Citytv stations: how far they were willing to go to commit to true diversity, how much they were willing to spend to ensure that Citytv had the necessary funding to build a separate and distinct voice, how strong were their commitments to local and priority programming, to journalistic independence and to the independent production sector?

At times it was a struggle; no participant was completely free. Commissioners must remain mindful of Parliament's legislated marching orders and the desirability of regulatory certainty; Mr. Fecan must represent shareholders interests; all of us must answer to Canadians. I believe that in the final analysis, the CTVgm team met the challenge. They adjusted; they abandoned their initial position that their application was all about gaining parity with their chief rival, CanWest, and they focused on the dictates of the Act, the need to structure the takeover of the Citytv stations so as to "provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern."

My colleagues in the majority appear to believe that some other as yet unknown purchaser will step in, buy and successfully operate the Citytv stations as much or even more in the public interest than CTVgm. Hopefully, they are correct. I have my doubts, however. The record of this proceeding demonstrates that without economies of scale and the synergies available in multi-faceted organizations like CTVgm, it is extremely difficult to operate a string of conventional stations like the Citytv group or the A-Channel group as anything more than a middle-of-the-road, low-risk, no-surprises sort of programming service.

That, according to the record, is what Citytv was on its way to becoming in CHUM's hands as it was forced to cut back on costs and retreat from its original "edgy" style of programming in an effort to minimize risks in an uncertain and fragmenting market. I find it difficult to imagine a prospective purchaser for the Citytv group who will bring to those five stations experience, resources and commitments to diversity and Canadian program production comparable to those offered by CTVgm.

I dearly wish that my colleagues in the majority could have been persuaded to exercise the discretion inherent in the very nature of Commission policy statements so as to grant this application in full. After all, even the Act which governs the Commission nowhere dictates the sort of inflexibility that the majority has brought to interpreting the common ownership policy.

Parliament's legislated policy requires only that Canada's broadcasting system be structured so as to "provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern." One way to achieve that, 44 years ago when the one-station-one market was created by the BBG, was to limit ownership opportunities. But it is not the only way, and in 2007 it may not even be a reasonable method of guaranteeing viewer choice. The world of broadcasting has changed a great deal since 1963.

This is the age of new media, of Google, Yahoo, You Tube, Facebook, Joost and of dozens more unregulated enterprises emerging or in the development stage. Regulated enterprises like Citytv find themselves sufficiently challenged by the need to succeed financially while meeting legislated cultural imperatives without having to shoulder the additional burden of inflexible regulatory dictates.

CTVgm has demonstrated ingenuity, sincerity and a willingness to comply – imaginatively, no doubt, but in a manner which can be enforced – with Parliament's laws and the intention of Commission policy. I would not have penalized them, as I am afraid the majority decision does, for finding another route to the goal of "diversity of voices." I would have granted their application in full subject to the alterations in valuations and benefits set out in the majority decision.