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Simplified approach to tangible benefits and determining the value of the transaction

The Commission sets out its revised approach to tangible benefits and determining the value of the transaction.

Specifically, to ensure that future tangible benefits for television transactions are streamlined and directed mainly to the production of Canadian programming, the Commission will generally require that at least 80% of such benefits be allocated to the Canada Media Fund (CMF) or various certified independent production funds, unless a compelling case is made that other measures could better meet the public interest. Of this amount, at least 60% shall be directed to the CMF. A list of eligible discretionary initiatives is also set out as a guideline to applicants.

For tangible benefits from radio ownership transactions, the Commission maintains its current approach, including the allocation levels to the various funds supporting the creation, marketing and promotion of English- and French-language Canadian music.

Further, the Commission finds it appropriate to require that tangible benefits generally be provided for changes to the effective control of all radio and television programming services. The current exemptions to the application of the tangible benefits policy shall no longer apply. Where a request for an exception is sought, the onus will be on the applicant to show that the exception is in the public interest and meets the criteria for an exception set out in this policy.

The Commission also generally maintains its current approach for calculating the value of the transaction, with modifications to exclude working capital elements not to be transferred upon closing and to include only the value of assumed leases for real property (buildings, studios and offices) and transmission facilities calculated over five years. Finally, with regard to transactions involving a mix of radio, television or other assets, the Commission adopts a simplified method based on revenues to allocate the value between these assets.

Introduction

1. Since the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the burden is on the applicant to show that the application is the best possible proposal and that approval

is in the public interest, consistent with the overall objectives of the *Broadcasting Act*. As one way of ensuring that the public interest is served, the Commission expects applicants to propose financial contributions (known as "tangible benefits") that are proportionate to the size and nature of the transaction and will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole. These overall requirements are referred to as the "benefits test."

2. Tangible benefits are generally directed to the production of Canadian programming, which serves the public interest in two main ways:

    - first, viewers or listeners benefit directly through an increase in the quantity and quality of Canadian programming; and

    - second, creators benefit by receiving increased support for the creation, distribution and promotion of Canadian programming.

3. Currently, for television programming undertakings, including conventional, pay and specialty undertakings, the Commission generally expects the contributions proposed to represent 10% of the value of the transaction as determined by the Commission (see Public Notice 1999-97 and Broadcasting Public Notice 2007-53). To be considered a benefit under the benefits test, the proposed contribution must be directed to initiatives that would not be undertaken in the absence of the transaction (i.e. "incremental benefits") and must flow primarily to third parties, such as independent producers. In addition, the Commission's general approach has been that most of the benefits (at least 85%) should support on-screen programming-related initiatives, while the remainder may go to social benefits, including contributions to initiatives that support the participation of the four identified employment equity groups in the broadcasting industry, media literacy organizations, archival initiaties and consumer-related initiatives such as third-party research or contributions to funds that benefit consumers.

4. For commercial radio undertakings (see Broadcasting Public Notice 2006-158, as amended by Broadcasting Regulatory Policy 2010-499), tangible benefits must generally represent at least 6% of the value of the transaction and be allocated as follows:

    - 3% to Radio Starmaker Fund (Starmaker) or Fonds Radiostar (Radiostar);

    - 1.5% to FACTOR or MUSICACTION;

    - 1% to any eligible Canadian content development (CCD) initiative at the discretion of the purchaser; and

    - 0.5% to the Community Radio Fund of Canada (CRFC).

5. In Broadcasting Decision 2012-574, the Commission indicated that it intended to review its tangible benefits policy. This review was included in the Commission's three-year plan for 2013-2016 with the stated aims of streamlining its approach and providing additional guidance and clarity for applicants relating to the benefits test, as well as clarifying and codifying the Commission's practice for calculating the value of the transaction and simplifying its allocation among assets.

6. Accordingly, in Broadcasting Notice of Consultation 2013-558, the Commission called for comments on various aspects of its approach to tangible benefits, including the following preliminary views:

    - future tangible benefits for television services should be allocated as follows:
        - at least 80% to specific third-party funds, of which:
            - at least 80% would go to the Canada Media Fund (CMF); and
            - no more than 20% would be directed to various certified independent production funds (CIPFs); and
        - no more than 20% at the discretion of the purchaser, with contributions being:
            - not self-serving as defined in the notice; and
            - based on specific eligibility criteria set out in the notice.
    - the above framework will streamline the reporting on tangible benefits;
    - the current tangible benefits framework for radio remains appropriate; and
    - tangible benefits should generally be provided as part of the change of ownership or effective control of all radio and television programming services (that is, the current criteria for exemptions[1] may no longer be relevant).

7. The Commission also called for comments on the following issues:

    - whether all expenditures on tangible benefits should be made before the close of the transaction to ensure that initiatives are funded and for ease of administration, as well as whether all outstanding tangible benefit expenditures from previous transactions should be made in advance of a new transaction;

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[1] Current exemptions are for unprofitable radio stations (measured as an average of profit before interest and taxes over three years) or television stations with revenues inferior to $10 million or who qualify for support from the Small Market Local Production Fund.

- the appropriateness of its current method for calculating the value of the transaction for purposes of determining the amount of tangible benefits; and

- since requirements for tangible benefits vary for different types of broadcasting undertakings, suggestions on different methods to allocate the value of the transaction between the various assets so that the process can be made simpler and more consistent and predictable.

8. The Commission received interventions by a wide range of parties, including consumer advocacy groups, broadcasters, industry associations, guilds, unions, funds and cable and satellite distributors. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca.

9. The Commission notes that some interveners argued that the tangible benefits policy should be considered in the broader context of the Let's Talk TV process[2] due to the many structural elements that will be examined in that process. However, the Commission notes that the purpose of the present proceeding is simply to clarify and streamline its administration of the benefits policy and that making its determinations public will allow interveners to comment on these determinations at the Let's Talk TV hearing if they so choose. Further, based on the record of the present proceeding, the Commission considers that maintaining its practice of imposing tangible benefits to help fulfill the public interest in transactions that are not subject to a competitive bidding process remains appropriate. Accordingly, the Commission finds it appropriate to issue its determinations in this proceeding.

10. **As it has in the past, the Commission may choose to exercise its discretion and depart from this policy where called for to meet the public interest and based on the record before it at the time.**

Television – Allocation of tangible benefits to third-party funds

11. Many interveners supported the Commission's proposal to direct a fixed percentage of tangible benefits to the CIPFs and the CMF (collectively, the funds). However, some parties argued for greater flexibility. For example, independent broadcasters such as the Independent Broadcast Group (IBG) and V Interactions inc. (V Interactions) argued that they should be allowed to direct their contributions to incremental spending on Canadian programming and programs of national interest produced in-house, while vertically integrated entities that currently benefit from such flexibility—Bell Media Inc. (Bell), Quebecor Media Inc. (Quebecor), Rogers Communications Inc. (Rogers) and Shaw Communications Inc. (Shaw)—argued that the current creative discretion allows them to produce new and innovative programming that would not otherwise be produced, with some suggesting that the mandating of subsidies would be unnecessarily restrictive. Similarly, producers such as the Alliance des producteurs francophones du Canada (APFC), the Association québécoise de la production médiatique (AQPM) and the Canadian Media Production

[2] See Broadcasting Notice of Consultation 2014-190.

Association (CMPA) expressed concern that the CMF could reduce programming diversity in addition to having a negative effect on licence fees.

12. Blue Ant Media Inc. (Blue Ant), the IBG, Quebecor, Rogers and Shaw also expressed concern about subsidizing their competitors.

13. Finally, in the event that the Commission decided to go forward with the proposal, some parties in favour of the overall approach proposed different levels of funding and allocation formulas, including directing funding to other funds in addition to the CIPFs and the CMF, dedicated funding for programming targeting official language minority communities (OLMCs) and Canada's regions, and varying approaches to digital media content.

Commission's analysis and decisions

14. As the Commission stated in its call for comments, while many of the tangible benefit initiatives proposed in the past have provided incremental benefits to the broadcasting system, it is concerned that over time the flexibility provided under the current case-by-case approach has allowed for contributions to initiatives that may have ultimately benefitted the purchaser, but not necessarily the broadcasting system as a whole. The Commission considers that programming licence fee payments and expenditures on script and concept development, for example, are a normal cost of doing business. This is the basis upon which compelling Canadian programs are developed and produced and is already widely funded by third parties, including the funds. Moreover, the Commission is of the view that tangible benefits should not generally be used to obtain regulatory credit for investments by broadcasters in their own products and services or programming that could have been produced in the absence of the transaction.

15. With respect to the arguments that the current case-by-case approach allows broadcasters to produce new and innovative programming that would not otherwise be produced and that the Commission's proposal would reduce programming diversity, the Commission's own analysis indicates that many of the program development and production initiatives that were funded internally by broadcasters could also have been supported by the funds, including the CMF. Indeed, most programming genres in both official languages are funded by one or more of the funds, with specific envelopes for OLMCs in the case of the CMF. The most popular varieties of programming are also funded extensively by the funds, as are many programs and content most difficult to produce in terms of relative cost and competition with other sources of programming. Among those program categories that are not funded by the various funds are sports, which is already well funded through advertising and subscriptions and does not generally require additional support; news, which is also often well funded (in the case of national news) and supported through other policies and regulations; and other categories that have not been the focus of Commission policy and are generally not very costly to produce.

16. Accordingly, the Commission finds that there is little evidence to conclude that the funding of innovative and diverse programming would be hindered by directing tangible benefit contributions to the funds. Additionally, the Commission notes that the funds are independent managers of contributions from various sources whose objective criteria would permit for a transparent and public allocation of the contributions to support the creation of Canadian programming. While some CIPFs are branded (for example, the Bell Fund, Shaw Rocket Fund, Cogeco Program Development Fund and Telus Fund), their contributions are not limited to programming broadcast by the broadcaster or vertically integrated entity that shares their name. Consequently, while directing tangible benefits to the funds would mean that the contributions would potentially become available to a purchaser's competitors, the purchaser providing the benefits would also be in a position to take advantage of any contributions provided by its competitors. The result is that the broadcasting system as a whole benefits from these contributions.

17. Moreover, some CIPFs place an emphasis on productions from specific provinces, while the CMF funding formula includes regional production incentives for under-represented regions. The flexibility therefore exists to earmark benefits for some regions or to contribute with relative confidence that many of Canada's regions will receive funding. It is also conceivable that new CIPFs may be developed over time with a mandate to fund certain types of programming.

18. With respect to digital media content, the Commission notes that the CMF and CIPFs already fund such content. While tangible benefits will flow from changes in the effective control of licensed undertakings, the broadcasting system and Canadian viewing habits are no longer limited to traditional television. As such, the Commission does not share the view of some interveners that the funding of digital media content should be reduced or eliminated or that the Commission should attempt to direct the CMF or the CIPFs to fund certain projects over others.

19. Regarding the level of contributions to be allocated to the funds, the Commission considers that the proposed 80% minimum level combined with the other measures for discretionary contributions adopted in this policy would ensure that the majority of benefits result in on-screen programming, consistent with the current benefits policy. However, given the different types of television transactions subject to the benefits policy (for example, the Bell/Astral transaction versus the purchase of a small local service), the Commission is of the view that consideration must be given to local and regional initiatives that meet the public interest. Accordingly, the Commission is prepared to consider any local or regional programming proposals or innovative and creative initiatives not contemplated by this policy that are clearly demonstrated by the applicant to be in the public interest and consistent with the intent of the benefits policy.

20. Further, in light of the fact that contributions to the CIPFs or some other initiative may better meet the nature of the transaction and ensure that a variety of programming and regional initiatives are funded, the Commission considers it appropriate to adjust the percentage of non-discretionary benefits to be devoted to the

CMF (80%) and the CIPFs (20%) as proposed in the notice so that 60% be directed to the CMF and 40% to the CIPFs, unless a request for additional flexibility is granted.

21. **Accordingly, to ensure that future tangible benefits are streamlined, incremental, non-self-serving and directed mainly to the production of Canadian programming, the Commission will require the following:**

    - **at least 80% of all tangible benefits relating to changes in the effective control of licensed television undertakings shall be allocated to the funds unless a compelling case is made that other measures could better meet the public interest; and**

    - **of this amount, at least 60% shall be allocated to the CMF and no more than 40% to the CIPFs unless a compelling case is made that another allocation formula could better meet the public interest.**

22. **Where an exception to these requirements is sought, the burden of proof shall be on the party seeking the exception to make the case that the alternative proposal is in the public interest. In so doing, the party seeking the exception should ensure that it has addressed all the criteria set out in paragraph 28 of this policy to ensure that the public interest is fully met**.

Television – Criteria for discretionary initiatives

23. A number of parties stated that the proposed criteria were sufficient, while others submitted that they were too strict or should be expanded, with the following types of currently accepted initiatives being discussed:

    - technological upgrades, improvements to existing programming and capital expenditures;

    - programming produced in-house or exclusively for the purchaser and other incremental improvements to the undertakings to be purchased;

    - temporary funds, self-directed or otherwise; and

    - staff training and industry-related activities such as festivals, conferences and research.

24. Some parties also argued that the Commission should require that a percentage of discretionary benefits be directed to the Broadcasting Accessibility Fund and the Broadcasting Participation Fund or even to other specific initiatives, such as a community television fund, a specific OLMC envelope or certain training-related initiatives. Others, including the APFC, the AQPM and UNIFOR, were of the view that tangible benefits should be made available to support local news and local programming.

Commission's analysis and decisions

25. Given its determinations above concerning contributions to the funds, the Commission is satisfied that a general contribution of no more than 20% of tangible benefits to discretionary initiatives is appropriate. Permitting some discretion on the part of the purchaser allows benefits to be tailored to the needs of the communities served by the undertakings to be acquired or to make contributions to local, regional and national organizations to support activities related to broadcasting or social benefits. Accordingly, notwithstanding the merit of some of the initiatives and funds proposed by interveners, the Commission is of the view that there is no pressing public policy rationale to further limit discretionary contributions or complicate the formula under which benefits are expended. Moreover, as stated earlier, the Commission considers that imposing limits on initiatives relating to digital media productions as proposed by some parties is not warranted given the shift in viewing habits and the many sources of funding for such productions and related content.

26. Nevertheless, the purchaser's discretion should be exercised within a clear policy framework that removes the need for guesswork by purchasers and interveners and the potential for gamesmanship, while also ensuring efficient administration by the Commission. In this respect, the definition of a self-serving initiative proposed in Broadcasting Notice of Consultation 2013-558 was devised to ensure that all tangible benefits meet the benefits test, which includes the requirement that benefits be incremental.

27. **Accordingly, the Commission considers it appropriate to retain the following definition of a self-serving initiative as proposed in its notice:**

- **an initiative in which monies are retained in-house, that is, one that does not involve payments of any kind to an independent party;**
- **an initiative that would normally be considered the cost of doing business, including:**
  - **technological upgrades;**
  - **any improvements to existing programming; or**
  - **other capital expenditures;**
- **an on-screen initiative produced by and exclusively for the applicant;**
- **an initiative devoted to the fulfilment of an existing contract or venture of any variety;**
- **an initiative related to programming that is already broadcast by a service that is owned or controlled by the purchaser or by the service to be acquired;**

- **a contribution to a temporary fund, self-directed or otherwise;**

- **staff training; or**

- **an initiative whose principal purpose is to promote a service that is currently owned or controlled by the purchaser or the service to be acquired.**

28. However, there may be cases where a proposal that falls within this definition may nevertheless serve the public interest. **In such cases, the Commission will expect applicants to meet the following requirements when filing their applications:**

    - **applicants must clearly show why and how the public interest would be served by what would otherwise be considered self-serving;**

    - **this evidence must be fully presented to the Commission and placed on the public record at the time of filing the application so that interveners may comment on whether the proposal meets the public interest; and**

    - **applicants must ensure that the proposed initiative:**

        - **yields a clear benefit to the broadcasting system as a whole, the community served by the undertaking to be acquired or both;**

        - **is clearly an incremental benefit—that is, is demonstrably not a normal cost of doing business; and**

        - **is related to the context of the transaction.**

29. For the reasons set out below, the Commission considers it appropriate not to include the following proposed additions to the list of eligible discretionary initiatives:

    - Initiatives to help fund Canadian creators who face financial difficulty – While such initiatives may contribute to the creative industry as a whole and act as an incentive for Canadians to become involved, they do not meet the underlying rationale of the benefits policy as there is no clear link to the production of programming, nor would they necessarily provide any tangible and incremental benefit to the broadcasting system as a whole. While these initiatives may be beneficial, the use of tangible benefits for their funding is not appropriate.

    - Local news and local programming initiatives – Local programming remains a requirement for conventional services. Vertically integrated companies are well financed and are expected to maintain their commitments absent the additional financing that they could derive from benefits, while independent broadcasters are eligible for funding from the Small Market Local Production Fund (SMLPF).

30. However, the Commission sees merit in certain training-related activities (separate from direct grants to educational initiatives), provided that they are operated or undertaken by third parties and that such training, conferences, festivals and research benefit producers, actors and other professionals rather than solely the purchaser's current or prospective employees. Applicants should also demonstrate that the proposed initiatives will provide opportunities to promote content and exchange ideas, including knowledge of new trends.

31. **Based on the above, the Commission adopts the following revised list of eligible discretionary initiatives as a guideline to applicants:**

- **independent production, which may include contributions to the CMF, any CIPF or regional production initiatives;**
- **digital media content production;**
- **funds that benefit consumers, including the Broadcasting Accessibility Fund and the Broadcasting Participation Fund;**
- **direct grants and contributions to schools that offer educational programs focussing on broadcasting-related studies, including communications and journalism, so long as these grants and contributions are unrelated to the training of persons employed by either the purchaser or the undertaking to be purchased;**
- **broadcasting industry-related training and conferences operated by third parties so long as the contributions are not used to subsidize the attendance of persons employed by the purchaser or the undertaking to be purchased;**
- **other broadcasting-related social benefits such as:**
    - **third-party research on consumer trends and needs with regard to media;**
    - **initiatives that support the participation of the four identified employment equity groups in the broadcasting industry (women, visible minorities, persons with disabilities and Aboriginals), including, for example, film festivals and contributions to organizations such as Women in Communications and Technology and the Foundation for Women in Film;**
    - **media literacy organizations such as MediaSmarts; and**
    - **archival initiatives such as contributions to the Canadian Broadcast Museum Foundation or the Canadian Communications Foundation.**

32. The Commission recognizes that under this framework some benefits will flow to various initiatives that may or may not provide public annual reports. Public transparency may therefore be limited, and public scrutiny of these initiatives could be warranted to ensure that contributions are truly incremental, non-self-serving and spent in a manner that meets the expectations of the benefits policy. The Commission also sees merit in standardizing and simplifying reporting requirements, as well as the concerns expressed by several interveners about the transparency of benefits reporting.

33. Consistent with this simplified approach and as proposed in its notice, the Commission will generally consolidate reporting on future benefits allocated to the funds through broadcasters' annual returns and communicate this information to Canadians through its annual Communications Monitoring Report (CMR).

34. However, when additional reporting is warranted (such as in the case of large transactions or where new and untested initiatives are to be funded), purchasers of television undertakings will be required to report annually on the discretionary initiatives to which they provide tangible benefits. **These reports, which will be made public separately from the CMR, will be simple, streamlined and generally limited to the following information for each initiative:**

- **initiative name;**
- **amount of money allocated in the previous broadcast year; and**
- **a letter from the recipient confirming the amount of funding received and how it was used in the way it was intended by the Commission as described in the decision granting the funding.**

Radio

35. Some representatives from the radio industry and other interveners argued that the current proportional allocation to the funds and discretionary portion for radio transactions remained appropriate. However, most submissions from the broadcasting and music industries argued for changes to the current allocation formula.

36. In general, broadcasters, such as the Association des radios régionales francophones (ARRF), Corus Entertainment Inc. (Corus), Harvard Broadcasting Inc., Jim Pattison Broadcast Group Limited Partnership (Pattison) and Newcap Inc. (Newcap), cited the importance of local initiatives and recommended that the discretionary portion of contributions be increased at the expense of either Radiostar or Starmaker. The ARRF further argued that the 0.5% allocation to the CRFC should be reallocated to eligible CCD initiatives in the case of small stations, noting that community stations benefit from government funding and that small stations should not finance the programming needs of community stations.

37. Conversely, music industry representatives opposed any reduction in the allocation to the four funds. In fact, a number of these interveners, such as the Alliance nationale de l'industrie musicale, the Association des professionnels de la chanson et de la musique and the Canadian Independent Music Association (CIMA), proposed that the allocation to FACTOR and MUSICACTION be increased by reducing the discretionary portion, while others proposed increases to the funding of the CRFC.

38. The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), CIMA and others further proposed that the overall contribution level be increased from 6% to 10%, with a proportional increase to the various funds and discretionary element. These parties generally argued that the financial health of the radio industry had significantly improved or that the 10% contribution level would be in line with that of television. ADISQ also submitted that the 4% reduction in the contribution level from the initial 10% level that was applied to radio transactions prior to 1998 had deprived the music industry of $40 million in funding since 2006.

39. ADISQ further proposed that contributions to MUSICACTION/Radiostar and FACTOR/Starmaker be allocated as follows regardless of the linguistic market of the radio assets purchased:

- 33% to the French-language market through MUSICACTION/Radiostar; and
- 67% to the English-language market through FACTOR/Starmaker.

40. ADISQ argued that such a funding mechanism, which would be administered by the Canadian Association of Broadcasters (CAB), would establish a better equilibrium between markets and would be in line with other established funds. It further argued that independent Canadian artists in the English-language market garner 80% of funding yet only capture 52.4% of total Canadian independent record sales, whereas Quebec independent artists capture 47.6% of sales and receive 20% of funding.

41. In reply, broadcasters overwhelmingly opposed any increase in the contribution level, disputing claims that the radio industry was healthy and arguing that the Commission had not proposed an increase. Bell also opposed the 33:67 allocation proposal, submitting that funding should be directed at the linguistic market served by the acquired station.

Commission's analysis and decisions

42. As stated in its call for comments, the Commission considers that the current tangible benefits framework for radio is clear and has been successful in yielding meaningful and complementary benefits to the radio broadcasting system. The Commission therefore only sought comments on whether the current proportional allocation of contributions to the funds and for discretionary initiatives remains appropriate.

43. The Commission's purpose in reviewing the tangible benefits policy was to provide clarity and simplicity by streamlining its approach to tangible benefits, as well as to ensure that they will yield measurable improvements to the Canadian broadcasting

system. Moreover, the stated purpose of the four funds is to make a substantial and discernible difference to the careers of Canadian artists by supporting the creation, marketing and promotion of English- and French-language music.

44. Together Radiostar and Starmaker currently receive 50% of all contributions from radio ownership transactions, while FACTOR/MUSICACTION and discretionary initiatives garner 25% and 16% of such contributions respectively. The four funds combined therefore receive the greater part (75%) of all funding from radio ownership transactions. FACTOR and MUSICACTION also receive funding from annual basic and over-and-above CCD contributions, as well as from the Department of Canadian Heritage. The Commission considers that the four funds are well financed and have been able to fulfill their respective mandates with the currently available funding. The Commission also notes that local initiatives play an important role in the communities a radio station is licensed to serve and is of the view that such initiatives should be maintained.

45. With respect to commercial broadcasters' position that the discretionary portion of the tangible benefits should be increased, the Commission notes that such initiatives represented 54% of all CCD contributions combined (basic, over and above and benefits) in the 2011-2012 broadcast year.

46. As regards the ARRF's proposal that the 0.5% allocation to the CRFC be reallocated to eligible CCD initiatives in the case of small stations, the Commission agrees that some French-language small-market commercial radio stations that do not receive subsidies compete against community stations that benefit from government grants and potentially from funding from the CRFC. While the Commission is sympathetic to this situation, it notes that the basic CCD requirement for stations with revenues under $1.25 million was eliminated in 2013 (see Broadcasting Regulatory Policy 2013-476), providing relief for small-market stations. Further, a different formula for small stations would be difficult to administer for transactions involving stations of various size. Nonetheless, nothing in the present policy would prevent an applicant from proposing a different formula for tangible benefits in the face of unique circumstances.

47. Finally, with regard to ADISQ's proposal that tangible benefits be divided between English- and French-language markets regardless of the linguistic market that the acquired station is serving, the Commission notes the following:

- A review of the funds annual reports for the 2012-2013 broadcast year shows that FACTOR accounted for 84% and Starmaker for 82% of all applications for funding relative to their French-language counterparts.

- Tangible benefits earmarked for Starmaker and Radiostar are already proportionally allocated by the CAB using an 80:20 (English:French) and 80:20 (French:English) formula respectively. Further, both FACTOR and MUSICACTION receive funding from the Department of Canadian Heritage that is proportionally allocated between English and French markets.

- While the ratio of funding to Starmaker and Radiostar in the 2012-2013 broadcast year was 75:25, in light of recent ownership transactions such as the change in effective control of Astral to BCE, Radiostar is projected to receive a 41% share of funding in the 2013-2014 broadcast year. In the 2017-2018 broadcast year, Radiostar will garner a 49% share of funding from all major ownership transactions approved prior to 2014. Similarly, MUSICACTION will receive a 33% share of funding from all major ownership transactions in the 2013-2014 broadcast year, increasing to 59% in the 2014-2015 to 2016-2017 broadcast years and 44% in the 2017-2018 broadcast year. The projected tangible benefits from these ownership transactions will provide the four funds with substantial and sustainable funding for the foreseeable future, with projected funding to Radiostar and MUSICACTION equaling and often exceeding the amounts sought by ADISQ in its proposal.

48. **In light of all the above, the Commission maintains its current tangible benefits framework for radio transactions, including the current allocation formula.**

Television and radio – Application of the benefits policy

49. The Commission's preliminary view that tangible benefits should generally be provided as part of the change of ownership or effective control of all radio and television programming services was supported by a number of parties, including industry associations, unions and guilds such as the Alliance of Canadian Cinema, Television and Radio Artists, the APFC, the AQPM, the Canadian Association of Community Television Users and Stations, the CMPA, the Directors Guild of Canada (DGC), the English-Language Arts Network, On-Screen Manitoba, the Union des artistes, Association des réalisateurs et réalisatrices du Québec and Société des auteurs de radio, télévision et cinéma (collectively UDA/ARRQ/SARTEC) and the Writers Guild of Canada (WGC), as well as the Fédération culturelle canadienne-française and the ministère de la Culture et des Communications du Québec. Several interveners went further, arguing that tangible benefits should be required for all ownership transactions, regardless of whether or not there is a change in effective control. Others also suggested that tangible benefits should be required in the case of transfers of ownership or control that involve the purchase and sale of a broadcast distribution undertaking (BDU).

50. However, some interveners, such as Bell, the IBG and Quebecor, argued for the status quo (that is, no benefits for unprofitable radio stations as measured as an aggregate of profit before interest and taxes over three years or for television stations with revenues inferior to $10 million or who qualify for support from the SMLPF), while others submitted that exemptions should be expanded as follows:

    - Blue Ant argued that benefits should not apply to independent broadcasters as this type of change in effective control has a minimal impact on the broadcasting system as a whole and the requirement to pay tangible benefits places an undue burden on such broadcasters.

- Arguing that the imposition of benefits hinders growth, Corus proposed that the following sliding scale be applied to tangible benefits for all transactions:

Television	**Radio**
10% on first $100 million	6% on first $50 million
5% on next $400 million	3% on next $50 million
2.5% on next $500 million	2% on next $50 million
0% on all remaining value	0% on all remaining value

- Rogers proposed that the policy not apply under the thresholds for which the Commission generally treats transactions on an administrative basis (that is, radio purchases valued at less than $15 million and television purchases valued at less than $30 million, as well as transactions involving minority interests or exempt assets). Rogers further submitted that no benefits should be required if the public interest was well served by the transaction without benefits.

Commission's analysis and decisions

51. Commercial enterprises purchase commercial undertakings because they anticipate that such acquisitions will ultimately serve their financial interests. In their estimation, despite the possible risks, the long-term benefit, whether strategic or purely financial, will outweigh those risks.

52. The Commission's current practice is to require tangible benefits for ownership transactions involving all broadcasting undertakings except for BDUs, and the Commission is of the view that this practice should be maintained. In this regard, the Commission notes that while the question of imposing tangible benefits on applications involving the change of ownership or effective control of a BDU was raised by certain interveners, Broadcasting Notice of Consultation 2013-558 did not expressly seek comment on this matter. Further, the Commission considers that the public record for this proceeding does not justify a reversal of that policy.

53. Currently, the benefits policy provides for the possibility of exemptions under certain circumstances. Specifically, the current exemptions are for unprofitable radio stations (measured as an average of profit before interest and taxes over three years) or television stations with revenues inferior to $10 million or who qualify for support from the SMLPF.

54. In the case of radio transactions, the exemption to the benefits policy for unprofitable stations was framed at a time when the industry was in significant financial distress;

consequently, the Commission decided to relax its rules for consolidation. Presently, the radio industry is financially stable and greatly consolidated. As such, past low profitability is not necessarily an indicator of how a station will perform once it is allowed to benefit from the synergies created by a larger group or under the management practices of a new owner.

55. Similarly, for television transactions, exemptions are currently granted based on some notion of financial weakness on the part of the undertaking to be purchased (that is, either the undertaking does not receive substantial revenues or is operated by an independent broadcaster or broadcast group that does not have the means of the larger groups). However, the exemption is applied to the purchaser, not the undertaking to be purchased. Effectively, the result is that the purchaser is rewarded for maintaining the operation of a failing business or a smaller operation. This does not acknowledge that any undertaking may be purchased by any entity—whether independent or vertically integrated, large or small, established or new—and that such an entity has a financial interest in acquiring the undertaking.

56. The current exemptions also ignore certain key aspects of the undertaking to be purchased. The acquisition of undertakings, even if small or unprofitable, often involves certain intangible assets, including branding, the ability to cross-promote services and more windows for programming and advertising, as well as programming rights, carriage and packaging agreements. In the case of radio and conventional television undertakings, purchasers also obtain licences associated with a scarce resource.

57. Based on the above, the Commission is of the view that the current exemptions are neither efficient nor effective ways of ensuring that the public interest is met.

58. With respect to the proposals for new exemptions, the Commission notes the following:

- While independent broadcasters have fewer resources than vertically integrated entities, Blue Ant’s proposal that independent broadcasters be exempted from the benefits policy considers mainly the status of the purchaser and not the fact that the purchase is being made through a non-competitive process for which tangible benefits offset any gains that might have resulted for the system had a competitive process occurred. Moreover, the Commission considers that to date the benefits policy has not served as a disincentive to consolidation either by vertically integrated entities or independent broadcasters.

- A consequence of Corus’s proposal that a sliding scale be applied to tangible benefits would be that there would be fewer benefits required for the most expensive transactions, such as those affordable only to the most capitalized broadcasters and vertically integrated entities. The largest broadcasters would clearly benefit from this approach and large-scale consolidation would be rewarded disproportionately. Similarly, under the Rogers proposal that the benefits policy not apply under the thresholds for which the Commission generally treats transactions on an administrative basis, the amount of tangible benefits flowing to the broadcasting system would be reduced and smaller groups or individual undertakings could easily be absorbed by purchasers without the need to pay tangible benefits. In the Commission's view, neither the Corus nor the Rogers proposal is consistent with the underlying public interest principles of the benefits policy.

59. Finally, regarding the submission that tangible benefits should be required for all ownership transactions, including those where there is no change in effective control, the Commission's practice has been to require tangible benefits where a change in effective control has occurred since such a change requires the Commission's express prior approval pursuant to its various regulations. The term "effective control" is also defined in the regulations. The Commission therefore considers that this approach provides for a simple, clear and consistent application of the tangible benefits policy.

60. **In light of all of the above, the Commission finds it appropriate to require that tangible benefits generally be provided as part of changes in effective control of all radio and television programming services. The current exemptions to the application of the tangible benefits policy shall no longer apply.**

61. Notwithstanding the preceding, there may be cases where the Commission finds that the public interest is fully met without tangible benefits. The onus will be on the applicant to demonstrate that this is the case (for instance, to demonstrate that the undertaking to be purchased is truly failing). **Requests for an exception must be made at the time of filing the application and should meet all of the following criteria:**

- **the undertaking to be acquired is not in its first licence term (many undertakings take up to one full term from the time of licensing to achieve profitability);**
- **the undertaking has suffered significant financial losses over an extended period of time (that is, for at least five consecutive years following the first licence term); and**
- **the purchaser demonstrates that there is a public interest either for the broadcasting system as a whole or the community served in maintaining the failing undertaking.**

62. It should be noted that the Commission will reserve its discretion at all times and that an exception will not necessarily be granted even if these criteria are met.

Schedule for the payment of benefits

63. While some parties supported the Commission's proposal to require that outstanding tangible benefits from previous transactions relating to a particular undertaking be

made before the close of a new transaction, they did not necessarily support the proposal to require that new tangible benefit expenditures be made in advance of the close of a transaction, nor did they view such requirements as applicable to all types of initiatives.

64. Further, a number of parties raised concerns over both proposals. For example, the APFC, the AQPM, the CMPA, the DGC and the WGC submitted that such measures might cause funds to dispense money too quickly, putting pressure on talent and studio space, artificially inflating associated costs and resulting in large, unpredictable influxes of funds without regard to projects or funding cycles. Similarly, Bell and Cogeco Cable Inc. (Cogeco) emphasized that allocating tangible benefit expenditures over a number of years allows for the support of programming over time and that requiring such expenditures upfront could act as a disincentive to transactions. Others indicated that the current approach was working well, with annual reports providing adequate information for Commission monitoring and few instances of non-compliance occurring with respect to the payment of tangible benefits. Several parties, including the APFC, the AQPM, Corus, the IBG and Rogers, also raised concerns relating to the cost of financing benefits payments or tax implications for charities and other not-for-profit organizations.

Commission’s analysis and decisions

65. The Commission notes the arguments provided by interveners to the effect that the Commission’s proposals could have several negative and unintended consequences. In particular, while larger funds may easily absorb large influxes of tangible benefit contributions and spread out the allocation of these funds to avoid a “boom and bust” cycle of funding, smaller funds and other recipients may not have the necessary administrative infrastructure or other flexibilities to allow them to absorb such funding.

66. Further, earlier in this policy, the Commission adopted a streamlined approach to reporting on tangible benefit expenditures for television licensees. This approach will simplify the tracking of such expenditures throughout their lifecycle, including if a service changes ownership before outstanding benefits from prior transactions have been expended.

67. **In light of the above, the Commission considers it appropriate to maintain its current general approach that benefits be expended in equal amounts over seven consecutive broadcast years.**

68. The Commission expects purchasers and vendors to ensure the ongoing compliance of the undertaking to be purchased and that outstanding benefits and other contributions are paid in the most efficient manner possible and in a timeframe that does not exceed the original payment schedule. As such, the Commission intends to amend the application form for changes in ownership such that the applicant will note publicly the amount of benefits, CCD contributions and any other regulatory financial obligations that are outstanding or in arrears, as well as the manner in which such

obligations will be met and where in the purchase agreement any arrears are discussed and attributed to the purchase price. For CCD contributions in particular, the Commission will include additional wording in the application form specifying that purchasers may be required to expend all CCD payments found in arrears upon the close of the transaction.

Calculation of the value of the transaction

69. Bell, Cogeco, Corus, the IBG, Rogers and Shaw submitted that the current methodology for calculating the value of the transaction did not reflect the true value of the assets acquired. Instead they either proposed or supported the use of enterprise value, defined as purchase price plus net debt (i.e. debt less cash on hand). In support of this proposal, Bell and Rogers filed a submission by PricewaterhouseCoopers (PwC) indicating that business valuation commonly relies on the notion of enterprise value, not value of the transaction. PwC argued that the value used for regulatory purposes should correspond to that used in financial markets and that consequently the inclusion of any other elements not consistent with the notion of enterprise value should be rejected. Other interveners noted that using enterprise value would mean the removal of all adjustments to the purchase price except for debt, including consulting contracts and non-competition agreements.

70. Regarding specific adjustments, Corus argued that cash balances not being transferred to the purchaser should be excluded, while Bell, Corus, Newcap, Rogers, Shaw and V Interactions proposed to exclude operating leases, stating that their inclusion was contrary to Canadian accounting practices and business valuation. Corus and Newcap also argued that including operating leases was a form of double counting because such leases represented an operating cost necessary to generate the forecasted earnings on which the purchase price was based and thus should be treated in the same manner as other operating expenses, such as program rights acquisition, that are not included in the Commission's determination of the value of the transaction. Shaw submitted that the inclusion of leases requires extensive and unnecessary effort during the application process.

71. For its part, the DGC supported the use of enterprise value, but proposed that the Commission increase the contribution level for television assets from 10% to 10.5% to offset the exclusion of elements currently included.

72. However, the CMPA, the Public Interest Advocacy Centre, the Consumers' Association of Canada, the Council of Senior Citizens Organizations of British Columbia and the National Pensioners Federation (collectively PIAC/CAC/COSCO/NPF), Quebecor, UDA/ARRQ/SARTEC and UNIFOR supported maintaining the current calculation method. In particular, the creator groups noted that the proposal to use enterprise value would reduce the amount of tangible benefits.

Commission's analysis and decisions

73. Purchase price is negotiated by the parties and is most often a combination of financial and other subjective factors. Financial considerations are likely derived using various business valuation techniques based on financial indicators such as growth rates, interest rates and levels of risk.

74. The Commission's purpose in determining the value of the transaction is not to value the undertakings to be acquired or ensure that the purchase price is reasonable, but rather to arrive at an appropriate amount on which to calculate tangible benefits, taking into account the public interest and the absence of a competitive licensing process. The Commission seeks to ensure predictability and consistency regardless of the structure of the transaction or the financing of the business.

75. As noted by some interveners, the Commission's current approach to determining the value of the transaction has significant similarities to enterprise value. The value of the transaction includes enterprise value calculated with gross debt instead of net debt and then adds other elements such as leases being assumed, ancillary agreements (such as consulting contracts or non-competition agreements), related parties' arrangements and multi-step transactions.

76. More specifically, the Commission finds the following with respect to the issues raised by interveners regarding elements currently included in the value of the transaction:

    - Working capital – Many purchase contracts provide for adjustments to be made to the purchase price at closing. Adjustments often relate to the working capital, including accounts receivable or payable and cash balances. The Commission agrees with Corus that only elements of the transaction that are to be transferred at closing should be included in the value of the transaction. The Commission notes that sometimes purchase contracts provide for elements of working capital not to be transferred to the purchaser at closing. **Accordingly, the Commission will change its current approach to exclude working capital not being transferred at closing.**

    - Net versus gross debt – Parties in favour of enterprise value argued that cash on hand should be deducted from gross debt because it could be used for debt repayment. Under normal business practice, cash, including cash equivalents such as term deposits, is maintained at a level sufficient to meet the daily operational needs of the business and debt repayment obligations in the short term. While cash on hand exceeding the amount needed to cover the preceding could be used to pay down long-term debt ahead of schedule, determining this amount would be highly speculative and would require discussions with applicants regarding possible plans and requirements, which would increase the regulatory burden. **Accordingly, the Commission considers it**

appropriate to maintain its current practice of including gross debt assumed by the purchaser in the value of the transaction.

- Leases – The acquisition of assets can be financed either through loans or from the owner of the assets through leases. Since the Commission includes assumed debt in the calculation of the value of the transaction, excluding all leases would mean treating assets differently depending on the method of financing. Further, excluding all operating leases would ignore a significant portion of the assets used in the broadcasting industry. However, the Commission notes the general agreement among interveners regarding the need to simplify the process of calculating the value of the transaction. The Commission has examined the types and amounts of leases that have been assumed by the purchaser in recent transactions and has determined that the most significant and relevant leases have been for real property and transmission facilities. As a result, the Commission considers it appropriate to exclude lower value leases, such as vehicles, photocopiers, postage equipment and software, from this calculation. **Specifically, the Commission will change its approach to include only the value of assumed leases for real property (buildings, studios and offices) and transmission facilities. The value of such leases will be calculated over five years.**

- Other elements – The inclusion of other commitments or arrangements related to a transaction, such as non-competition agreements and consulting contracts, is necessary to fully reflect the cost of acquisition. Excluding these elements might lead to the structuring of transactions in such a way as to reduce the amount of tangible benefits. The Commission notes Bell's position that including such elements is acceptable only if their value exceeds the market value for the services. However, adopting this approach would require that the Commission determine the market value for the services, which would likely be labour-intensive and thus contrary to the goal of simplifying the process. **Accordingly, the Commission considers it appropriate to maintain its current practice of including other commitments such as non-competition agreements, consulting contracts and break-up fees in the calculation of the value of the transaction.**

Allocation of the value of the transaction between different types of assets

77. For transactions involving a mix of radio, television and other assets, different approaches were proposed to allocate the value of the transaction between the various types of assets given that requirements for tangible benefits vary for different types of assets.

78. For example, Cogeco proposed the use of a simplified allocation method based on proportion of revenue. However, Bell and Rogers argued that this approach would not take into consideration the various earning margins and thus profitability of different services and was not widely used for valuing broadcasting entities. Instead, they

proposed the use of the following thresholds and exemptions, as set out in a submission prepared by PwC:

- First threshold – Transactions would be exempt from tangible benefits where they involve minority interests and no change in effective control, licensed services operating at a loss or services whose enterprise value is below some threshold level (not specified).

- Second threshold – The allocation where enterprise value is above the first threshold but under a second threshold (not specified) would be done by means of a simplified method, based on earnings before interest, taxes, depreciation and amortization (EBITDA) or unlevered free cash flows.

- Third threshold – For all other transactions, allocation would be based on the filing of a valuation report. To reduce the regulatory burden where valuation reports are required, PwC suggested that the applicant and the Commission jointly retain the services of a certified business valuator and be bound by the conclusions of the report.

- Exception to allocation – For transactions involving only one type of asset or where the operations related to other broadcasting or non-regulated operations were immaterial (for example, some minor radio assets in a transaction involving mostly television assets), an allocation would not be required. In such cases, tangible benefits would be calculated without attempting to allocate the negligible assets.

79. However, while supported in reply by Shaw, which also initially supported the use of historical EBITDA, the PwC approach was opposed by the CMPA, the DGC and the WGC on the grounds that it would deprive the public of the opportunity to participate and comment on the valuation report. Noting that the use of the discounted cash flow (DCF) method had pushed discussions beyond the reach of all but a select few, the DGC supported the use of historical EBITDA, as did PIAC/CAC/COSCO/NPF.

80. The use of EBITDA was in turn opposed by Corus and Quebecor, who noted the drawbacks of the historical and adjusted EBITDA methods proposed by the Commission: first, they do not take into account the time value of money or level of risk assumed in the transaction; second, they do not require a valuation report; and third, past EBITDA would not reflect future growth or synergies achieved by the transaction. Quebecor and UNIFOR recommended continuing the use of DCF, stating that it was the most commonly used valuation method in the industry and most accurately reflected the value of the assets and the time value of money. Quebecor also recommended that the Commission retain the services of an independent expert qualified in valuation.

81. Corus and Shaw further suggested that minority interests be exempted even if they form part of a larger transaction subject to the tangible benefits policy, noting that no tangible benefits are payable when the minority interest is separately acquired.

82. Finally, Bell, Rogers, Shaw and Pattison all opposed the inclusion of the value of a licensed service's distribution on other platforms, as contemplated by the Commission in its call for comments.

Commission's analysis and decisions

83. The Commission notes that business valuation methods require a high level of expertise, thus limiting the participation of many interveners in the allocation discussion. The Commission considers that a simplified method based on revenues would facilitate participation and minimize the number of assumptions and the use of professional judgment, as well as provide for a simpler, consistent and transparent allocation process. Such a method would rely on readily available financial information contained in annual reports filed with the Commission and the previous year's financial statements, thus reducing the burden on applicants and the Commission. Moreover, unlike the proposed EBITDA methods, such an approach would be consistent with the Commission's determination earlier in this policy not to exempt undertakings that have incurred losses and would eliminate the need to take into account acquisition premiums and synergies. Finally, the Commission considers that it would be inappropriate for the Commission to be bound by a consultant's report as proposed by Bell and Rogers.

84. **Based on the preceding, the Commission considers it appropriate to simplify the allocation process by adopting the revenue method proposed by Cogeco. Under this method, the value of the transaction is allocated according to the proportion of the revenues of the undertakings of each type (radio, television, unlicensed) relative to the total revenues from all assets that are part of the transaction.**

85. Further, by adopting the revenue method, the Commission notes that non-controlling interests could easily be excluded from larger transactions as proposed by Corus and Shaw and that this would harmonize the treatment of such transactions with that of acquisitions of non-controlling interests in individual transactions. **Accordingly, the Commission will modify its current practice for the allocation of non-controlling interests so as not to include them when they are acquired as part of a larger transaction.**

86. With respect to multi-platform distribution, the Commission notes that while applicants recognize the benefit of multi-platform synergies, some request to exclude the revenues of multi-platform distribution of licensed services from the amount subject to tangible benefits. The Commission notes that such distribution would not exist without the licensed broadcasting service as there would be nothing to distribute.

87. The value of the transaction is intended to represent all the additional revenue-generating activities resulting from the acquisition of the licensed broadcasting service. The inclusion of all revenue derived from the transmission of the licensed service on alternate platforms fulfills this objective. Moreover, a major component of the Commission's revised approach to tangible benefits as set out in this policy is the directing of tangible benefits to the CMF, which specifically

provides for the financing of the production of multi-platform content. **Accordingly, the Commission considers it appropriate to maintain its current practice of including the revenues of multi-platform distribution of licensed services along with the revenues from the licensed services in its allocation of the value of the transaction.**

Secretary General

Related documents

- *Let's Talk TV*, Broadcasting Notice of Consultation CRTC 2014-190, 24 April 2014
- *Call for comments on the Commission's approach to tangible benefits and determining the value of the transaction*, Broadcasting Notice of Consultation CRTC 2013-558, 21 October 2013
- *Amendments to the* Radio Regulations, 1986 *concerning basic Canadian content development contributions and the addition of a definition of the Community Radio Fund of Canada*, Broadcasting Regulatory Policy CRTC 2013-476, 6 September 2013
- *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2012-574, 18 October 2012
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *Determinations regarding certain aspects of the regulatory framework for over-the-air televisions*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999