



April 5, 2007

Filed via epass

Ms. Diane Rheume
Secretary General
Canadian Radio-Television and Telecommunications Commission
Gatineau, Quebec
K1A 0N2

Dear Ms. Rheume

Re: Application 2006-1667-5 (the “Application”) by CTVglobemedia Inc. (“CTVgm”) on behalf of CHUM Limited (“CHUM”) for approval for acquisition of effective control of CHUM by CTVgm, Broadcasting Notice of Public Hearing CRTC 2007-3 (the “Public Notice”)

INTRODUCTION

1. The Writers Guild of Canada (“WGC”) represents more than 1,800 professional screenwriters across Canada who create the distinctly Canadian entertainment we enjoy on our television, movie screens, radio and computers – such as dramatic TV series and movies, feature films, documentaries, animation programs, comedy and variety series, children's and educational programming, radio drama, corporate videos and digital media productions.
2. The WGC is pleased to participate in this public hearing to ensure that the acquisition of CHUM by CTVgm contributes to the ongoing development, production and exhibition of high-quality scripted Canadian programming. With the changes which we have suggested we support the Application.
3. The WGC requests an opportunity to appear before the Commission at the public hearing commencing April 30, 2007 in order to further elaborate on the following issues from the perspective of the creators of Canadian programming.
4. CTVgm has made a name for itself as a major supporter of quality Canadian programming from series such as “Corner Gas” to movies of the week such as “The Man Who Lost Himself”. These and many other programs have been both critically acclaimed and audience pleasing. The

tangible result of its commitment to Canadian programming has been its Broadcaster Performance Envelope allocation, which at over \$22 million for fiscal 2006-07 was second only to the federally mandated allocation of \$61 million to the CBC. As these envelopes are calculated based on past investment in Canadian programming, audience ratings and support of regional programming it is clear that CTVgm is the leading broadcaster in support of Canadian programming. We also commend CTVgm on being wholly Canadian owned.

5. While the WGC does not support per se the increasing consolidation within the broadcast and related industries as evidenced by this Application, it does feel that such consolidation is inevitable given the competitive market both in Canada and around the world. The WGC wishes to encourage the Commission to ensure that the policies enshrined in the Broadcasting Act, as discussed below, are supported throughout the review of the Application.
6. To that end, in this intervention, the WGC would like to focus on the following aspects of the Application as raised by the Public Notice, which the WGC feels the Commission needs to address:
 - a. Concentration of Ownership
 - b. Value of the Transaction and Value of the Tangible Benefits
 - c. Specifics of the Tangible Benefits Package

CONCENTRATION OF OWNERSHIP

7. In 1999 the Commission restated its existing policy with respect to horizontal and vertical integration.¹ With respect to horizontal integration (although it does not identify it as such) the Television Policy says,

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. 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.

8. The 1999 Television Policy also refers to vertical integration and, among other things, says,

¹ See Public Notice CRTC 1997-97, *Building on Success – A policy Framework for Canadian Television*, para 17-18

In the past, the Commission has examined problems arising from vertical integration on a case-by-case basis, when considering applications for new services or for transfers of ownership or control involving broadcasters and independent production companies. The Commission acknowledges that the potential for preferential treatment exists in such cases, yet remains of the view that vertical integration can lead to benefits, such as cost savings and increased efficiencies. Appropriate safeguards, where required, will be applied on a case-by-case basis.

9. In the Application, CTVgm asserts that “the approval of this proposed transaction would not have a materially significant impact on the level of competition”² and makes the following comments about market concentration which the WGC would like to address:
 - CTVgm’s acquisition of the Radio Stations does not give rise to any issues related to concentration of ownership in the radio sector.³
 - Given that CTVgm’s principal conventional competitor, CanWest, has two originating stations available in each of the markets served by the Citytv Stations, there is no undue competitive advantage. Indeed, the acquisition of the Citytv Stations would allow CTVgm to be on a more level structural playing field with CanWest in the Ontario, Vancouver/Victoria and Alberta television markets.⁴
10. CTVgm says that its proposed acquisition of CHUM Radio’s 19 FM and 14 AM radio stations does not give rise to any issues related to concentration of ownership in the radio sector because CTVgm does not currently own any radio stations.⁵
11. The WGC considers that the acquisition of CHUM’s 33 radio stations raises concentration issues related to cross-media ownership. In Broadcasting Decision CRTC 2003-205, the CRTC denied TVA and Radio Nord Communications (RNC) the authority to acquire 14 radio undertakings because of the dominant position of Quebecor Media inc. (QMI) in the Quebec market – even though Quebecor Media did not own any radio stations. Among other things, the decision says:

² Application, Supplementary Brief, Page 19

³ Application, Supplementary Brief, Page 8

⁴ Application, Supplementary Brief, Page 21

⁵ Application, Supplementary Brief, Page 8

The Commission notes that, because of TVA/RNC's association with the QMI corporate group, the TVA/RNC partnership would benefit following the proposed transaction. The Commission also notes however that TVA accounts for more than 47% of television viewing hours among Francophones (conventional television and analog specialty and pay services) and that, following the transaction, the TVA/RNC partnership would acquire more than 25% of viewing/listening hours for all private sector broadcasting in Francophone Quebec (including conventional television, specialty services and radio). In addition, QMI holds more than a 38% share of the sales of Quebec daily newspapers, while Archambault Group Inc. is the leader in record distribution and Vidéotron is Quebec's main cable distributor. For all the markets affected by the transaction, the QMI group would now be a participant in the radio market as well. Even though its participation would not be large, the QMI group would be in an unprecedented privileged position in which it would be the only corporate group, in three specific markets, namely Montréal, Québec and Saguenay, that would hold an ownership interest in radio, television, local newspapers, pay and specialty television services, and magazines, in addition to having a presence through community-based television (Vidéotron's Canal VOX).

12. The CTVgm transaction would give CTVgm the cross-media ownership of 33 radio stations, 26 television stations as well as the ASN satellite-to-cable service, a significant interest in 36 specialty television services, production companies, music publishers, Canada's largest national daily newspaper (The Globe and Mail) and magazines. CTVgm already has significant ownership links to Canada's largest local daily newspaper (The Toronto Star), book publishing (Harlequin Enterprises), and a major broadcast distribution undertaking, Bell ExpressVu.
13. In the transaction proposed here, CTVgm proposes to acquire and operate five conventional television stations and 16 specialty television services. The five conventional television stations in Vancouver/Courtenay, Calgary/Lethbridge, Edmonton/Red Deer, Winnipeg/Portage La Prairie and Toronto/Woodstock/Ottawa currently form the Citytv group of stations and duplicate CTV's conventional television coverage in six markets (if retransmission of the Toronto signal into the Ottawa market is considered as a sixth market). The 16 specialty stations include BRAVO!, Space: The Imagination Station, MuchMusic and MuchMoreMusic.
14. It is obvious from the above that the proposed acquisition by CTVgm of the CHUM assets would give CTVgm an unprecedented cross ownership in radio, television and many of the other media cited in Broadcasting

Decision CRTC 2003-205 referred to in paragraph 9 above. While the WGC is not asking that the Commission deny the application on the grounds of cross-ownership, we do ask that the Commission take this level of cross-ownership and CTVgm's expected horizontal ownership (i.e. ownership of more than one over-the-air television station in one language in a give market⁶) into consideration when reviewing the Application and apply the "appropriate safeguards" against preferential treatment. This transaction should yield significant and unequivocal benefits to the communities served, to the broadcasting system as a whole, and it should be in the public interest. We do not feel that the Application, as filed, will accomplish this objective.

15. In the Directors Guild of Canada and Writers Guild of Canada intervention of August 14, 2004 concerning the application by CHUM seeking authority to transfer the effective control of Craig Media, we endorsed the application but expressed a number of concerns. Among other things, we noted that as the CHUM television empire expanded and CHUM approached the status of a "larger" multi-station group, CHUM began to contribute more to 10-point Canadian drama. At the time, we looked forward to the day when CHUM would accept all of the responsibilities of a large multi-station group and provide an outlet for Canadian programs, especially drama, in addition to what CTV and Global were doing. This was to occur on both the traditional CHUM and newly acquired Craig stations.
16. Now that CTVgm is proposing to acquire the CHUM television stations, divest itself of Craig's apparently money-losing A-Channel group of conventional stations (Victoria/Vancouver, Pembroke/Ottawa, London, Wheatly/Windsor, Wingham and Barrie/Parry Sound), and retain the Citytv group of stations, our broadcasting system is, in some ways, taking a step backwards. Under this scenario, the Citytv group of stations would remain part of a large multi-station group (CTVgm) and the A-Channel stations would presumably be sold to a third party who is not a large multi-station group.⁷ Since, according to the Commission's 1999 Television Policy, the large multi-stations, such as CTV and CanWest, have greater Canadian priority program requirements than the smaller station groups, this would open the door to a substantial net loss in the production and broadcast of Canadian priority programs.

⁶ Public Notice CRTC 1997-97, *Building on Success – A Policy Framework for Canadian Television*, para. 17.

⁷ The only other large English-language multi-station group who could conceivably acquire the A-Channel television stations is CanWest, who already operates two stations in several of the markets served by the A-Channel stations (i.e. Victoria, Barrie/Toronto, etc.) and is busy with its acquisition of Alliance Atlantis Corporation.

17. If the six money-losing A-Channel stations are sold to anybody but CanWest, they will cease to belong to a major English-language multi-station group. According to their current conditions of licence the A-Channel stations are all required to broadcast a minimum of eight hours of priority programming per week. Consequently, the new owner will almost certainly ask the Commission to relieve the A-Channel stations of their current obligation, by conditions of licence, to broadcast a minimum of eight hours per week of Canadian programs in the priority program categories between 7:00 p.m. and 11:00 p.m. The net result of the proposed CTVgm transaction, including the resale of the A-Channel stations to a smaller English-language multi-station group, will be a loss in the total number of hours of priority programs in the English-language broadcasting sector.

18. At page 19 of its Supplementary Brief, CTVgm claims that the sale of the money-losing A-Channel group of stations “will provide an opportunity for the emergence of a new national player.” At this stage in industry consolidation the only broadcasting players with cash available, i.e. Québecor, Rogers, Astral and Corus, do not have other stations or enough other stations to combine with A-Channel to turn the combined package into a new national network.

19. The WGC is concerned that substantially less Canadian priority television programming will be available on the Canadian broadcasting system unless certain modifications are made to the proposal before us. The A-Channel group of stations will almost certainly end up in the hands of a third party who is not a large English-language multi-station group, and who will seek to broadcast less Canadian priority programming, but the Citytv group of stations would then end up broadcasting less priority programming.

20. On page 14 of its Supplementary Brief, it is written that,

CTVgm commits to ensure that, on a weekly basis, the priority programming to be aired on the Citytv Stations will be wholly separate and distinct from the priority programming to be broadcast on CTV stations. CTVgm will also commit that no more than 10% of the overall programming aired on the Citytv Stations in any broadcast week shall duplicate that aired on CTV stations. [Emphasis added.]

21. This commitment means that priority programming could be entirely duplicative outside of any given week. This is contrary to two other points which CTVgm makes in the Supplementary Brief and CTVgm’s January 29, 2007 response to CRTC’s request for more information (the “January 29

Response to Deficiencies Letter”) ⁸: i) that it will maintain the conditions of licence and commitments of the Citytv stations and ii) that it will “maintain and foster the distinctive programming philosophies that set Citytv and CTV apart”⁹.

22. The WGC supports CTVgm’s goal of fostering two distinct brands which cater to different demographics with a variety of programming. However, this is best done by fully maintaining the separate conditions of licence. In other words, as Citytv now has a commitment to air 8 hours of priority programming¹⁰ and CTV has a commitment to air 8 hours of priority programming, those two commitments should be maintained with no overlap during the week or in other weeks. The WGC has no objection to CTVgm recognizing efficiencies by overlapping 10% of its non-priority programming schedule but priority programming should be completely distinct between the two station groups at least on an annual basis. The Commission should include this as a condition of licence as one of the safeguards to protect a diversity of voices within the Canadian broadcasting system.

23. If the Commission wants to ensure that CTVgm’s acquisition of the Citytv group of stations has no negative impact on the total volume of priority programming in the system, it should require that the Citytv group of stations generate annually at least eight hours of original priority programming that is separate and distinct from the eight hours required of the existing CTV stations on an annual basis.

24. The CRTC should impose as a condition of approval of this application that:

- **All priority programming aired on the Citytv stations is wholly separate and distinct from the priority programming to be broadcast on CTV stations.**
- **no more than 10% of the overall programming excluding priority programming aired on the Citytv Stations in any broadcast week shall duplicate that aired on CTV stations.**

⁸ CTVgm’s response of January 29, 2007 to the CRTC’s letter dated January 18, 2007 (referred to hereinafter as the “January 29 Response to Deficiencies Letter”), pg. 20

⁹ Application, Supplementary Brief pg. 24

¹⁰ In the January 29 Response to Deficiencies Letter CTV incorrectly refers the Citytv stations as having an 8 hour commitment except for Citytv Toronto which only has a 7 hour commitment. In its application to acquire Craig, CHUM committed to eight hours of priority programming on all of its conventional television stations, including Citytv Toronto, as an intangible benefit associated with the transaction (*CHUM Supplementary Brief* (Appendix 1A), 2004, p.17)

25. If these conditions are fulfilled, the Canadian programming on the Citytv stations will continue to be separate and distinct from the Canadian programming on the CTV stations as it is today.

VALUE OF THE TRANSACTION AND VALUE OF THE TANGIBLE BENEFITS

26. We will discuss CTVgm's estimation of the value of the transaction for the purpose of determining the amount of tangible benefits under the following headings:

- Exclusion of \$270 million in debt from the value of the transaction;
- Methodology used to justify the value of the transaction with regard to the allocations between the radio and television assets;
- Percentage of the transaction value for the purposes of determining the eligible benefits in the television sector.

Exclusion of \$270 million in debt from the value of the transaction

27. According to CTVgm, "the value of the transaction for the purpose of determining the amount of tangible benefits that should be paid with respect to CTVgm's acquisition of the CHUM Services should be determined by excluding the debt being assumed by CTVgm."¹¹ This is justified by claiming, "CHUM's debt as of August 31, 2006 is attributable to acquisitions made since the end of 2001, primarily the Craig assets and CKVU." According to CTVgm, to include this \$270.3 million debt would amount a form of "double taxation" since benefits have already been paid in regard to the Craig and CKVU transactions. However, when asked by the CRTC to identify precedents where the Commission has accepted a valuation of a transaction for the purpose of calculating tangible benefits where the value of purchased assets on which benefits were previously paid was excluded, CTVgm was unable to so.¹²

28. Since the publication of the CRTC's 1999 television policy, the value of debt has been included in determining the volume of tangible benefits to be paid with respect to the acquisition of television and radio assets announced after that policy was released. The Writers Guild supports the Directors Guild of Canada submission to the Commission related to CTVgm's proposed acquisition of CHUM and concurs with the Directors Guild's detailed analysis of this issue.

¹¹ Application, Supplementary Brief, Page 29

¹² Joint response of CTVgm and Merrill Lynch of January 29, 2007 to the CRTC's letter dated January 19, 2007 (the "CTVgm/Merrill Lynch Response to Deficiencies Letter"), pp.6-8.

Methodology used to justify the allocations between radio and television

29. To calculate the value of the transaction for the purpose of determining the amount of tangible benefits, CTVgm relies on a Valuation Report prepared by Merrill Lynch. An “abridged” version of the Merrill Lynch Valuation Report (Appendix 6 to the application) is on the public record. The methodology used to value the transaction is important since the CRTC’s policies require that tangible benefits be paid at a minimum rate of 10% of the value of television assets and at least 6% of the value of radio assets. If CTVgm has undervalued the television assets relative to the radio assets, the overall value of the benefits package is lower than it should be.
30. The abridged Merrill Lynch Valuation Report utilizes two common multiples to calculate the value of the CTVgm television and radio assets based on multiples derived from previous or “precedent” transactions.¹³ All of the precedent transactions were “fair market value” transactions as defined by Merrill Lynch but Merrill Lynch chooses to “adjust” its calculations by removing the transactions that it deems to be higher than most on the basis that they are not “representative”. Merrill Lynch removes selected high-end multiples as unrepresentative, but no low-end multiples. The “adjusted” mean value therefore has the effect of reducing the mean value of the multiple chosen bringing it closer to the range Merrill Lynch ultimately adopts.
31. For each of the business segments in the CTVgm transaction (conventional television, radio, etc.), Merrill Lynch selects one of the two multiples as the more relevant and adopts a range of values, as it sees fit. As can be seen in Table 3 below, this range of values generally falls below the mean value but more or less conforms to the “adjusted” mean value, with one important exception. The range of values chosen by Merrill Lynch falls substantially below both the mean value and the “adjusted” mean value for conventional television.

¹³ The two multiples used by Merrill Lynch are the ratio of the purchase price to total revenues and the ratio of the purchase price to Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA).

Table 1**Adjustments by Merrill Lynch to Common Multiples in Precedent Transactions used to Evaluate CHUM's Business Segments**

	Multiple Chosen by Merrill Lynch	Mean Value	Adjusted Mean Value	Range Adopted by Merrill Lynch
Conventional television	Revenue	2.8	2.3	0.75 – 1.00
Mature specialty television	EBITDA	15.2	14.5	13.0 – 15.0
Digital specialty television	Revenue	3.9	2.0	2.0 – 3.0
Radio	EBITDA	14.1	13.0	11.0 – 13.0

Source: CTVgm/Merrill Lynch Response to Deficiencies Letter, pp.19-22.

32. To calculate the value of the transaction for the purpose of determining the amount of tangible benefits, CTVgm estimates the market value of each of three categories of activity – television assets, radio assets and regulated assets to be divested.¹⁴ This is accomplished by multiplying the upper limit of the range adopted by Merrill Lynch, by the activity's total 2006 revenues or EBITDA, as determined by Merrill Lynch, for each category of activity. The share of each of these three activities in the total is then applied against the actual purchase price (\$1,365 million) to estimate the market value of each of the three activities.
33. Table 4 compares the allocations for benefits purposes adopted by CTVgm, on the basis of Merrill Lynch's calculations, with those resulting from adopting the mean values and the adjusted mean values indicated in Table 3, and otherwise retaining all of the other calculations undertaken by CTVgm. In answer to a deficiency question from the CRTC, CTVgm declined to explain the rationale underlying the range of multiples used in the valuation of the regulated assets to be divested "as this would place CTV at a significant competitive advantage in the sale process."¹⁵ As a result, Table 4 uses CTVgm's value for the regulated assets to be divested in all three scenarios.

¹⁴ Unregulated assets are included in the value of the transaction for the purpose of determining the amount of tangible benefits.

¹⁵ CTVgm/Merrill Lynch Response to Deficiencies Letter, p.23.

Table 2

**Total Transaction Value Indicating
Allocated Amounts for Benefits Calculation
(\$ millions except for percentages)**

Business Segment	Revenue/ EBITDA	Allocations Chosen by CTVgm		Allocations Using Mean Value		Allocations Using Adjusted Mean Value	
Conventional television	149.4	149	56%	418	62%	343	60%
Mature specialty television	58.2	873		885		844	
Digital specialty television	24.5	74		96		49	
Radio	47.1	637	33%	664	29%	612	30%
Regulated assets to be divested	n.a.	208	11%	208	9%	208	10%
Estimated Enterprise Value	-	1,941	100%	2,271	100%	2,056	100%

Source: Abridged Merrill Lynch Valuation Report, p.17 and
CTVgm/Merrill Lynch Response to Deficiencies Letter, pp. 13,19-22.

34. As can be seen in Table 4, the sensitivity analysis conducted here suggests that the allocations chosen by CTVgm are sensitive to the assumptions chosen and that they tend to lower the relative value of the radio assets and of the regulated assets to be divested (i.e. their percentage of the total). Table 5 indicates the extent to which CTVgm's choices have reduced the overall size of the benefits associated with this transaction.

Table 3

**Values Attributed to Three Sectors of Activity
Using Alternative Methods of Calculation
(\$ millions)**

	Allocations Chosen by CTVgm		Allocations Using Mean Value		Allocations Using Adjusted Mean Value	
	Attributed Value	Associated Benefits	Attributed Value	Associated Benefits	Attributed Value	Associated Benefits
Television	765	76.5	846.3	84.6	819.0	81.9
Radio	450	27.0	395.9	23.8	409.5	24.6
Regulated assets to be divested	150	0	122.9	0	136.5	0
TOTAL	1,365	103.5	1,365.1	108.4	1,365	106.5

35. By revising the common multiples in the way they have, Merrill Lynch and CTVgm have reduced the total benefits package by an amount between \$3 million and \$4.9 million.

Percentage of transaction value used to determine tangible benefits

36. In Public Notice CRTC 1999-97, the Commission announced that it would generally expect 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. In Decision CRTC 2001-647, *Transfer of control of CKVU-TV Vancouver*, the Commission clarified this announcement by saying that a “minimum level of 10% ... would generally be expected of applicants in transactions of this nature under the Commission’s policy framework for Canadian television (Public Notice CRTC 1999-97).” [Emphasis added.]
37. There are at least two occasions in which the Commission has endorsed benefit packages that exceeded this minimum. In the transfer of control of CKVU-TV to CHUM mentioned above, the tangible benefits package was 11.8%. And in the acquisition of parts of WIC Western International Communications by CanWest Global, the Commission approved a tangible benefits package that amounted to more than 12%.¹⁶ In the current transaction, CTVgm is proposing only 10%.
38. Considering the size and nature of the CTVgm transaction, and that CTVgm proposes to acquire and operate five conventional television stations and duplicate CTV’s conventional television coverage in six markets (if retransmission of the Toronto signal into the Ottawa market is considered as a sixth market) and that the approval of CTVgm’s application with respect to the acquisition of the Citytv group of stations would radically contravene the Commission’s current policy that generally permits ownership of no more than one over-the-air television station in one language in a given market, the Writers Guild believes that the minimum 10% tangible benefits requirement is insufficient in this case and that the Commission should increase the benefits package to 15%.
- 39. The CRTC should ensure as a condition of approval of this application that:**
- **CHUM’s debt of \$270 million is included in determining the volume of tangible benefits to be paid by CTVgm with respect to the acquisition of CHUM’s television and radio assets, and that the total benefits package is increased by \$27 million;**

¹⁶ Decision CRTC 2000-221, *Acquisition by CanWest Global Communications Corp. through its wholly-owned subsidiary CW Shareholdings Inc., of the ownership interests held previously by WIC Western International Communications Ltd. in various conventional television stations and in certain other broadcasting undertakings.*

- In addition, CTVgm increases the total benefits package in regard to television by between \$3 million and \$4.9 million;
- In addition, CTVgm increases the total benefits package in regard to television from 10% to 15% of the transaction value for benefits purposes.

INCREMENTALITY OF THE BENEFITS

40. As is the custom in an ownership transfer, CTVgm proposes both unquantifiable intangible benefits and quantifiable tangible benefits that would result if the transaction were approved. The tangible benefits are intended to satisfy the CRTC's policy requirements with respect to clear and unequivocal benefits that would result from television and radio ownership transfers. Furthermore, in order to be accepted as a benefit, among other things, the proposed expenditure must be incremental.

Intangible Benefits

41. CTVgm takes the position that one of the intangible benefits of the proposed transaction is financial stability and security for the CHUM services. CTVgm asserts that, while the CHUM Specialty Services and Radio Stations have fared relatively well, the Citytv stations are "faltering" and points to a September 27, 2006 CHUM policy document (submitted after the sale agreement with CTVgm) as evidence of this:

In its TV Policy Review submission¹⁷, CHUM notes that its conventional television group experienced considerable losses over the last licence term that were camouflaged by the overall success of its specialty television and radio businesses. CHUM also indicated that over the last decade, its conventional television operations have recorded pre-tax losses of \$68 million and even its flagship station, Citytv Toronto, has only averaged single-digit profitability over the last three years.^{18 19}

42. However, according to the segmented information in CHUM's Interim Financial Statements to May 31, 2006, for the first nine months of fiscal year 2006, CHUM's total television revenue (less agency commissions) increased by 9.4% to \$401.8 million and its EBITDA increased by 11.1% to \$90.7

¹⁷ CHUM submission dated September 27, 2006 in response to BNPH 2006-5, at p.1.

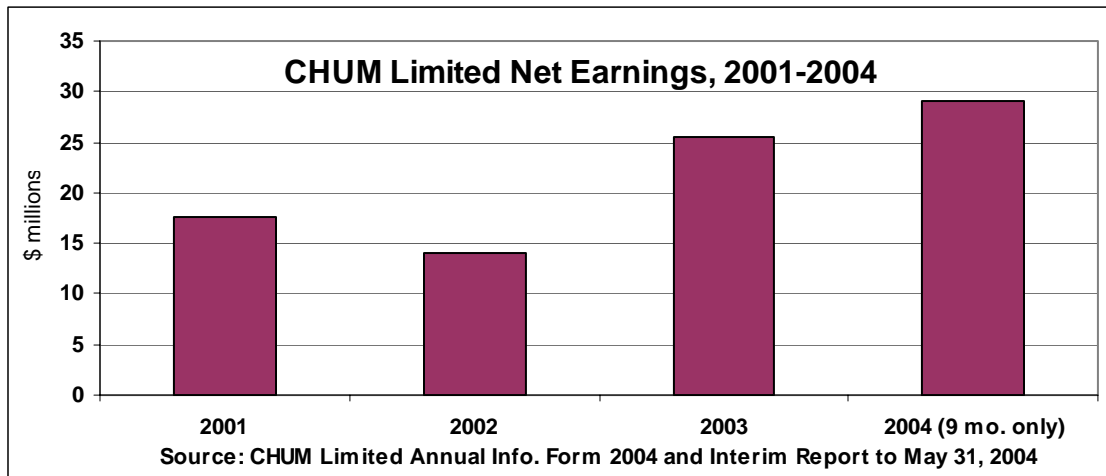
¹⁸ *Ibid.* at p. 6.

¹⁹ Application, Supplementary Brief, Page 12-13

million.²⁰ At the time of the sale agreement with CTVgm, CHUM was certainly not in hardship.

43. Moreover, CHUM was a highly successful company in previous years as we pointed out in our joint submission of August 13, 2004 with the Directors Guild of Canada related to CHUM's acquisition of Craig Media (Broadcasting Notice of Public Hearing CRTC 2004-5).
44. Financially, CHUM was very successful and posted an increase in third-quarter profit of more than 44 percent raising its net earnings for the first nine months of 2004 above those for the entire fiscal year ending August 31, 2003. See Chart 1, which is reproduced from our August 13, 2004 submission.

Chart 1



What is more, CHUM's segmented television holdings enjoyed earnings (EBITDA) of \$57.6 million in the first nine months of fiscal year 2004 compared to \$55.5 million over the same period in 2003.

45. We can also see CHUM's success in the Annual Reports of CHUM which are part of the public record. To quote Jay Switzer, President and Chief Executive Officer of CHUM in the 2005 Annual Report (the last Annual Report available):

2005 was a very successful year for CHUM. Not only did we deliver excellent financial and operating performance, we positioned the Company for continued long-term growth and financial success. As you

²⁰ CHUM Interim Financial Statements to May 31, 2006. These are the last CHUM financial statements available on the public record.

read the review of our radio and television operations, you will see the progress achieved in 2005.²¹

46. CTVgm also claims there has been “a precipitous decline in the value of CHUM’s conventional television stations” and that “CTV’s ownership of the CHUM Services (including the Calgary, Edmonton and Winnipeg stations) will provide these undertakings with the financial stability and security to ensure their ongoing viability, while at the same time, maintaining their diversity.” But there is no evidence of any precipitous decline in the value of CHUM’s conventional television stations. The real reason for the sale of CHUM to CTVgm is indicated clearly a page earlier in the Deficiency Letter: “CHUM’s sale was precipitated by the death of its founder, Allan Waters, and the decision of the Waters family that they needed to pass the torch onto someone else and exit the business.”²²

47. Accordingly, the WGC finds it hard to accept the argument that this transaction provides to the Canadian broadcasting system the unquantifiable tangible benefits of returning financial stability to the CHUM services. As the more realistic motivation is the desire of the Waters family to cash out and the desire of CTVgm to become a more profitable broadcasting entity, in order to protect the Canadian broadcasting system the Commission should expect a higher than usual percentage of tangible benefits from the transaction as set out in our recommendations.

Tangible Benefits Package

48. The WGC specifically supports a number of the programs proposed by CTVgm as part of its Tangible Benefits Package and generally supports CTVgm’s commitment²³ that the Tangible Benefits Package will provide incremental support of Canadian programming.

49. Should the Commission agree that the entire Benefits Package should be increased as we have proposed above, the WGC supports the analysis and proposal contained in ACTRA’s intervention that additional benefits be allocated to 10-point Canadian drama produced at arm’s length from CTVgm.

²¹ CHUM 2005 Annual Report, page 6

²² CTVgm/Merrill Lynch Response to Deficiencies Letter, pp.3-5.

²³ January 29 Response to Deficiencies Letter pg. 50

Writer Only Drama Development Program

50. As mentioned in the Supplementary Brief²⁴, the proposed Writer Only Drama Development program is based on a similar program, which formed part of the BCE-CTV Benefits Package (CRTC 2000-747). Over the past six years the BCE-CTV Writer Only program has funded the script development of numerous projects over a variety of genres such as crime fiction, comedy and true-life stories. The program allows the broadcaster to work directly with writers and showrunners to fully realize their creative vision and ensure that the project is a good fit with the broadcaster before involving a producer. Once realized, the projects can be assigned to a producer who undertakes further development or production outside of the resources of the Writer Only program. BCE-CTV reported in their 2006 Benefits report that they have achieved great success with this program. To date 11 projects have been developed to the point where they could be assigned to a producer and of that number 8 had been produced. Writers equally believe that this is a successful program as it allows them direct access to the buyer during the early stages of the creative process. "In the early stages, the direct approach is a dream . . . the more directly you can hear their desires, the better."²⁵
51. Development is an essential stage in the creative process. Writers frequently have to self-finance the early stages of development (i.e. concept, outline, first draft) in order to develop a project to the stage where it can interest a producer. The producer needs to see a fleshed out concept or even a first draft script to be able to attract development financing. That development financing is required to develop the script to the point where it can attract production financing and be produced. Telefilm funds writers for feature film development however other than the BCE-CTV Writer Only program there is no financing that a television writer can access without a producer, in order to do the work necessary to attract a producer. Writers are the only talent group regularly expected to work for free. Limited to their own resources writers can only develop a few projects at a time as they juggle paid work with what is basically unpaid work. This effectively limits the creativity available and has a direct impact on the number of high quality projects available to a broadcaster. Only the best scripts should be produced and broadcast and without sufficient development financing writers are hard pressed to reach that standard.
52. The Writer Only program at BCE-CTV was welcomed by the WGC because it attempted to address that situation and did so in a way that was not bureaucratic, paper-intensive or time-consuming. It is within this creative environment that successful productions such as "Last Exit" and "Selling

²⁴ Application, Supplementary Brief, pg. 35

²⁵ Writer participating in the CTV Writer Only Program, name withheld by request

Innocence” were conceived. There are no artificial funding deadlines. Writers pitch the broadcaster and work with the development executives at the broadcaster. The primary concerns are the creativity and the project’s audience appeal. Will it fit within the broadcasters plans? This is unlike producer-led development which may have no knowledge of the broadcaster’s needs or even which broadcaster will licence the project. Producer-led development often requires that the writer make creative compromises in light of non-Canadian financing or multiple broadcasters.

53. With the BCE-CTV program, should CTV determine that a project once developed was not right for its schedule, the project would die and the writer could do nothing with it. The program as developed for CHUM however has addressed this situation and if CHUM passes the project will be released to the writer and they will be free to pitch it to other broadcasters, subject only to the repayment of development funds to CHUM on first day of principal photography. This will bring more high quality projects into the broadcasting system.
54. We would like clarification on CTVgm’s position on what would happen if CHUM passed but CTV was interested in the project. In the January 29 Response to Deficiencies Letter²⁶ they state:

... if a project idea evolved during development such that it was no longer suitable for a CHUM platform but was for a CTV platform, then we feel CTV should have the opportunity to discuss with writer continued development or licensing of the project to CTV on the same basis that he or she would with any other broadcaster. Any such further development costs would be paid for by CTV and not by the CHUM benefits...

We expect that ‘on the same basis that he or she would with any other broadcaster’ would mean the repayment by CTV to CHUM of the development funds advanced to that point so that CHUM could continue to develop Writer Only projects. We would like that point clarified in the final terms of the Benefits Package.

55. As the Writer Only program did not have a separate financial allocation within the overall Development package proposed by BCE-CTV it has not been reported separately. There is no record therefore of the amount spent on Writer Only development or of the number of projects funded through it, other than the titles mentioned in the annual reports. However, in the CHUM Benefits program the Writer Only program will be separately allocated and reported on to assist in assessing its effectiveness.

²⁶ January 29 Response to Deficiencies Letter (“Deficiency Letter”), pg. 55

56. The WGC supports the Writer Only program for CHUM.

Drama Development – APTN

57. The CHUM benefits package also allocates funds to drama development for movies and series to be broadcast on APTN in order to encourage the growth of aboriginal programming. The WGC supports drama development funding of any kind but particularly of such an underserved market. Given the dearth of development financing it is difficult to address the needs of niche markets without such dedicated incremental financing.

Writers Guild of Canada Diverse Writers Immersion Program

58. The WGC is developing a Diverse Writers Immersion Program in order to address the growing need for diversity in television. Canada's screens need to reflect the diversity of its population. This has to be addressed at all levels including casting and key crew but it starts with the creative vision. Writers of diverse backgrounds must be engaged to tell their own stories. There are few visible minorities within the working writer community. In order to increase the number of diverse writers working in television the WGC has determined that it needs to take the lead in reaching out to talented young people across the country and provide them with professional level training and mentorship. The WGC is the logical organization to take on this task as WGC members are the working professional writers who have the necessary skill set to share with emerging writers.

59. The WGC has undertaken a preliminary review of available writing programs for career-ready writers from diverse backgrounds and feels strongly that there is still a need that is not being met. For example, the National Screen Institute has organized a skills training program for aboriginal youth interested in positions in the television industry. While it is an intense program it provides an overview of the entire industry rather than focusing on writing as the WGC program will do. Further it is limited to aboriginal youth. ReelWorld Film Festival, a festival that showcases the work of diverse filmmakers, offers an annual workshop sponsored by Writers Boot Camp of Los Angeles. However, this workshop can only provide cursory training within its one hour time slot.

60. Unlike the two programs mentioned, the WGC Diverse Writers Immersion Program intends to work intensely with writers across the country through five-day workshops in various production centres. It will be very practical in focus. Training will be aimed at developing a professional quality writing sample that will open doors for these emerging writers. Mentoring will provide writers with contacts and career information to assist them in getting hired.

This program will be run by the WGC using skilled writers who also have experience in training young writers.

61. The WGC feels that this program fits very nicely with CHUM's well-known reputation for inclusiveness and onscreen diversity both in terms of its broadcast news staff and drama programs such as "Godiva's". Onscreen diversity needs to be supported by off-screen diversity so that television programs reflect authentic voices. CHUM cannot increase its volume of authentic diverse dramas without a greater pool of diverse writers to draw from.
62. Without the funding allocated in the CHUM Benefits Package it is unlikely that the WGC will be able to take on this worthwhile project as it cannot be financed from the WGC's own resources. The WGC therefore strongly supports the WGC Diverse Writers Immersion Program.

Trendsetters and Risk-takers

63. This envelope will extend series orders beyond 13 episodes. The WGC strongly supports any financing that will extend series orders closer to the 26 episodes that the audience still expects. In the past a television season had 26 episodes and then was repeated for another 26 episodes. Since 1999 broadcasters have spent less on Canadian programming due to the loss of the drama expenditure requirement. Government financing has been cut or not kept up with inflation. The international market has dried up as international broadcasters concentrate more on domestic programming. Due to these factors the orders were reduced to 22, then to 18 and more recently to 13 and even 6 episodes.
64. Such short orders barely give an audience time to get hooked on a series before it is gone. If it takes a full year to produce another 6 episodes the audience has moved on to other, usually American, fare. Promotion is costly and it is natural for a broadcaster to spend less to promote a short episode order than it would to promote a longer run. Promotion is key if a Canadian series is going to compete successfully against the heavily promoted US television series. Television success depends on a number of factors but enough episodes to generate buzz and audience loyalty is a key factor.
65. This benefits program is also modeled on a successful element of the BCE-CTV Benefits package. The Series Extension Program allowed CTV to extend the licence for "The Associates" and "Degrassi: The Next Generation" beyond their initial 13 episode orders and in the case of "Degrassi" CTV has been able to do this for five seasons in a row. This has given "Degrassi" enough episodes to grow its audience, make international sales, diversify on to other platforms with webisodes, mobisodes and books and become a brand that benefits the broadcaster, producer and all creative participants.

66. The success of “Degrassi” would not have been possible without the volume of episodes made possible by the Series Extension program and it is hoped that the same benefits will accrue to CHUM. Since 2003, when CHUM first started licensing original dramas, CHUM has licensed 12 drama series, 6 of which had a 13 episode order or less. Series like “Godiva’s” which was tested first with 6 episodes and then renewed for a further 13 episodes, might have greatly benefited from a series extension program such as that proposed as part of the CHUM Benefits package.

Third Party Promotion

67. Canadian programs compete with US programming for audience. US programming has the benefit of millions of dollars of promotion aired both on US stations broadcast in Canada and on Canadian stations simulcasting US programming. Broadcasters need to work hard and work innovatively to get the attention of the audience and drive them to the Canadian programs. Without sufficient promotion Canadian programs will languish unwatched on the broadcaster’s channels. The Third Party Promotion package will allow CITY and the specialty channels to promote their priority programming series on other platforms such as print and billboards in order to reach new audiences who might not be watching these channels.

Broadcaster run or independently administered fund

68. In the past the CRTC has approved benefits packages being managed by the broadcaster in question and has approved of the funds being transferred to a certified independent fund for administration. The CRTC has asked whether CTVgm’s approach of administering the funds themselves is more beneficial to the broadcasting system than investing the funds to provide ongoing support to Canadian programming, such as when the MacLean Hunter Fund (now Independent Production Fund) was set up.

69. There are benefits to both systems however CTV’s recent success with its Benefits package suggests that ‘if it ain’t broke, don’t fix it’. Access to funds directly through the broadcaster allows a writer (in the case of Writer Only) or producer to deal only with the broadcaster rather than half a dozen or more financiers. Writers and producers do their best creative work when they can work directly with the broadcaster and when the schedule in financing and developing the project is related to how much time it takes to get the creative right rather than artificial deadlines imposed by funding agencies. The broadcaster already knows the writer or producer so there is no application process with submission of corporate records, financial statements, long form agreements and many more documents. The first two seasons of “Corner Gas” were produced very successfully under the Groundbreaker Program within the CTV Benefits Package. As mentioned above Degrassi is an

example of a successful application of the Series Extension program. And our writers tell us, as we stated above, that they prefer the simplicity of the Writer Only program than any other funding mechanism.

70. Independent funds exist and have a role to play however there is no need to direct more funds to them and away from the focused administration of the broadcaster.

CONCLUSION

71. In the broadcasting world it is clear that bigger is not only better, but it is a matter of survival. Broadcasters are competing with larger and larger broadcasters around the world and are competing with other, often unregulated, platforms. As a result the Canadian broadcasting system is going through one of its periodic shake-ups as broadcasters position themselves to be able to take on the upcoming challenges and opportunities. The WGC has no interest in standing in the way of these mergers and acquisitions. However, at the same time it is our primary interest to ensure that the opportunity for Canadians to view high-quality distinctive Canadian programming is preserved and even enhanced. We need to grow as an industry and become healthier rather than contract.

72. Thank you for the opportunity to participate in this hearing. The WGC requests to appear at the public hearing to elaborate on our position and answer any questions the Commission may have.

Sincerely,



Maureen Parker
Executive Director
Writers Guild of Canada

c.c. CTVglobemedia

Summary of Recommendations

The Commission should ensure as a condition of approval of the Application that:

- None of the priority programming aired on the Citytv Stations duplicates the priority programming aired on CTV stations.
- no more than 10% of the overall programming, excluding priority programming, aired on the Citytv Stations in any broadcast week shall duplicate that aired on CTV stations.
- CHUM's debt of \$270 million is included in determining the volume of tangible benefits to be paid by CTVgm with respect to the acquisition of CHUM's television and radio assets, and that the total benefits package is increased by \$27 million;
- CTVgm increases the total benefits package in regard to television by between \$3 million and \$4.9 million;
- CTVgm increases the total benefits package in regard to television from 10% to 15% of the transaction value for benefits purposes.
- Should the Commission agree that the entire Benefits Package should be increased as proposed above, additional benefits are allocated to 10-point Canadian drama produced at arm's length from CTVgm.
- For the Writer Only Development Program please clarify that in the event that CHUM passes on a project but CTV wishes to further develop or produce the project, CTV shall repay development monies advanced under the Writer Only Development Program to CHUM.

*** End of document***