



Writers Guild of Canada

July 17, 2007

Filed via epass

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-Television and Telecommunications Commission  
Gatineau, Quebec  
K1A 0N2

Dear Mr. Morin,

**Re: Broadcasting Notice of Public Hearing CRTC 2007-5**

Attached you will find the Writers Guild of Canada (WGC) submission in regard to Broadcasting Notice of Public Hearing CRTC 2007-5, *Diversity of Voices Proceeding*.

The WGC wishes to appear at the public hearing beginning September 17, 2007 to elaborate on the discussion contained in the accompanying document.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maureen Parker'.

Maureen Parker  
Executive Director  
Writers Guild of Canada



Writers Guild of Canada

**Broadcasting Notice of Public Hearing CRTC 2007-5**

**DIVERSITY OF VOICES PROCEEDING**

**July 18, 2007**

WRITERS GUILD OF CANADA  
DIVERSITY OF VOICES PROCEEDING

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## EXECUTIVE SUMMARY

1. Common ownership, concentration of ownership, cross-media ownership, horizontal integration, vertical integration and economic competition are not directly addressed in the *Broadcasting Act*. Attention by the Commission to industrial concentration and economic competition issues is primarily a means to further the objectives related to the diversity of voices in the Canadian broadcasting system. The pursuit of diversity of voices objectives is essential because, by potentially giving excessive economic and political leverage to a few large corporate entities, ownership concentration and a lack of economic competition can negatively affect the fulfilment of the Commission's objectives in section 3 of the *Act* with regard to Canadian content. The current public process is an excellent opportunity to establish general rules with regard to the diversity of voices and greater predictability concerning the Commission's decisions.
2. Apart from specific rules related to particular forms of broadcast industry concentration, in this document the WGC has endeavoured to formulate one general principle that might be applied in all situations involving ownership concentration. The principle is as follows:

The CRTC should strive to ensure that any proposed transaction includes:

- A net positive effect on the aggregate use of Canadian creative and other resources in the creation and presentation of programming in the broadcasting system, including programs in the "priority" categories, with particular attention to Canadian drama;
  - Incremental tangible benefits based on a program expenditure requirement in regard to Canadian priority programming;
  - Separate and autonomous program acquisitions, program scheduling and program management in the two entities concerned (if applicable); and
  - An applicant who has the financial capacity to ensure the economic viability of the new entity to be acquired, while fulfilling licence conditions in regard to Canadian content that are no less onerous than those already in place.
3. The WGC considers that the CRTC should retain its existing policy of no more than one over-the-air television station in one language in a given market and make an exception only where particular circumstances warrant. Moreover, this policy should be expanded to include specialty and pay television services where a "market" is defined in terms of the Commission's program categories and audience targets by age group as set out in the *Television Broadcasting Regulations*.

4. Since the Commission does not seem to have a general policy concerning the common ownership of BDUs, BDUs should be subject to safeguards with respect to common ownership such as those relating to structural separation set out in Decision CRTC 99-169, *Amalgamation of Cancom and Star Choice*.
5. There exist quantitative economic indices to measure industrial concentration in a single market, such as the Herfindahl or Herfindahl-Hirschman index, but they do not embody any inherent notion of an optimal level of concentration and no single quantitative measure should be adopted by the Commission. It is essential that the Commission maintain and publish ownership and financial information related to industrial concentration and economic competition issues. Complete public disclosure in regard to diversity of voices issues is fundamental to the public hearing process so that interveners, including the WGC, can effectively analyze and comment upon proposed ownership transfers and their impact on the diversity of voices in the Canadian broadcasting system.
6. Owing to the risk to program diversity caused by amortizing the cost of programs over multiple station groups, the CRTC should strive to ensure that any proposed transaction involving significant cross-media ownership includes the principle identified in paragraph 2 above.
7. It is apparent from the Commission's recent decisions that policy has converged on the requirement by television licensees to license from independent producers no less than 75% of their original, first-run Canadian content hours of programming broadcast. This rule should be applied generally in regard to the production and broadcasting of priority programs.
8. The CRTC should strive to ensure that any proposed transaction involving vertical integration includes the principle identified in paragraph 2 above.
9. The CRTC's benefits policy was designed to ensure that any transfer of ownership (subject to certain qualifications) is accompanied by benefits for the Canadian broadcasting system as well as for Canadian listeners and viewers. The benefits policy was not designed specifically to address the diversity of voices issue.
10. The WGC considers that the tangible benefits proposed by transfer of ownership applicants should have guidelines that ensure the benefits will be incremental to the Canadian broadcasting system. Tangible benefits should generally be "on-screen" benefits related to priority programs, with particular attention to drama, payable to independent production companies, and incremental to current program expenditures by the parties concerned. "Social" benefits should be directly related to the Canadian broadcasting system.

11. For all ownership transfers involving multi-station groups or resulting in increased concentration of television ownership, cross-media ownership or vertical integration, the WGC believes that program expenditure requirements should be applied in regard to Canadian priority programming. The reintroduction of program expenditure requirements for all Canadian over-the-air television services would help to ensure that program expenditure requirements related to ownership transfers are truly incremental.
12. The WGC is not convinced that the Diversity of Voices proceeding is the appropriate forum to discuss issues related to the financing of the Canadian Television Fund. It is not clear how the mode of financing of the CTF is related to the diversity of voices in the Canadian broadcasting system. The WGC considers that issues related to the financing of the CTF should be addressed in the fuller context of the review of the CTF Task Force Report's overall recommendations.
13. This said, together with maintaining the requirement for 10 Canadian content points for all CTF funding schemes, the WGC is in favour of increasing the financing available to the CTF. Since one of the objectives of many transfer of ownership applicants for Canadian broadcasting licences appears to be to reduce the costs of the transaction by proposing certain tangible benefits that are either non-incremental or self-serving, the WGC proposes that the Commission require that a fixed percentage of all tangible benefits related to television broadcasting undertaking ownership transfers, say 25% of the total value of the transaction, be accorded to the CTF. However, the allocation of tangible benefits to the CTF should be considered as a temporary source of additional revenue to the CTF and not as a permanent source.
14. Cross-media ownership of "new" media and "old" media should be treated in the same way with regard to the diversity of voices. In other words, the cross-media ownership of unlicensed digital activities such as Internet services, new portable media distribution systems (including voice communications systems and audiovisual distribution systems) or web portals together with broadcasting undertakings should be treated in the same manner as the cross-media ownership of newspapers and broadcasting undertakings.
15. Furthermore, the Commission should actively encourage existing broadcasting licensees to "utilize" new media in order to ensure a Canadian presence on these new platforms. The WGC hopes the CRTC's future review of the New Media Exemption Order will result in the regulation of new media and that the Commission will then develop policies to encourage a greater Canadian presence on new media platforms.

16. The *Competition Act* and the *Broadcasting Act* should be amended to give the CRTC exclusive jurisdiction with regard to competition in the realm of broadcasting. The Competition Bureau does not possess the mandate or expertise to find the appropriate balance between competition issues and the diversity of voices objectives of the *Broadcasting Act*. In the interim, the Interface Agreement published in 1999 should be updated to give primacy to the CRTC in matters related to the attainment of the objectives of section 3 (Broadcasting Policy for Canada) in the *Broadcasting Act*.

## INTRODUCTION

17. This document constitutes the Writers Guild of Canada (WGC) submission in regard to Broadcasting Notice of Public Hearing CRTC 2007-5, *Diversity of Voices Proceeding*.
18. The WGC represents more than 1,800 professional screenwriters across Canada who create the distinctly Canadian entertainment we enjoy on television, movie screens, radio and computers, and includes dramatic television 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.
19. The WGC wishes to appear before the Commission at the public hearing commencing September 17, 2007 to further elaborate, from the perspective of the creators of English-language Canadian programs, on the issues discussed below.
20. Section 3 (Broadcasting Policy for Canada) of the *Broadcasting Act* says that the programming provided by the Canadian broadcasting system should provide "a wide range of programming", be "varied and comprehensive", expose the public to "differing views on matters of public concern", and include programming that includes a significant contribution from the "independent" production sector. These are the diversity of voices objectives of the *Act*.
21. Common ownership, concentration of ownership, cross-media ownership, horizontal integration, vertical integration and economic competition are not directly addressed in the *Broadcasting Act*. Attention by the Commission to industrial concentration and economic competition issues is primarily a means to further the objectives related to the diversity of voices in the Canadian broadcasting system. The pursuit of diversity of voices objectives is essential because, by potentially giving excessive economic and political leverage to a few large corporate entities, ownership concentration and a lack of economic competition can negatively affect the fulfilment of all of the Commission's objectives in section 3 of the *Act* with regard to Canadian

content. The current public process is an excellent opportunity to establish general rules with regard to the diversity of voices and to ensure greater predictability concerning the Commission's decisions in this area.

22. The body of the present document is organized in accordance with the headings in Broadcasting Notice of Public Hearing 2007-5. In the following discussion, the WGC addresses primarily issues related to television although some attention is also paid to new media. For greater clarity, the APPENDIX to the present document summarizes the WGC's answers to selected questions in Broadcasting Notice of Public Hearing 2007-5.

## **COMMON OWNERSHIP OF BROADCASTING UNDERTAKINGS**

### **Over-the-air Television Services**

23. In Broadcasting Notice of Public Hearing 2007-5, the CRTC says "common ownership' refers to the number of broadcast licences, in a single media, held by a single entity (a person or a corporation) operating in one market." In Public Notice CRTC 1999-97, *Building on success – A policy framework for Canadian television*, the Commission reaffirmed its policy that generally permits ownership of no more than one over-the-air television station in one language in a given market. The WGC considers that the CRTC should retain its existing policy of no more than one over-the-air television station in one language in a given market and make an exception only where particular circumstances warrant.
24. Ultimately, the CRTC should endeavour to construct a regulatory framework that ensures "each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming" (subject to the caveat that follows in the *Act*). This article of section 3 of the *Act* should be an overriding principle guiding the policies of the Commission in regard to the diversity of voices.
25. Furthermore, as explained in the section below regarding the Commission's benefits policy, for all ownership transfers involving multi-station groups or resulting in increased concentration of television ownership, cross-media ownership or vertical integration, the WGC believes that program expenditure requirements should be applied in regard to Canadian priority programming. The WGC believes that all Canadian over-the-air television services should be subject to program expenditure requirements and the reintroduction of such requirements (whose removal was announced in Public Notice 1999-97) would help to ensure that program expenditure requirements related to ownership transfers are truly incremental.

26. In addition, where, in exceptional circumstances, a single entity is permitted to own more than one over-the-air television station in one language in a given market, the Commission should ensure that the two entities operate independently in regard to program acquisitions, program scheduling and program management – including separate and distinct licence fee negotiations. This proposed requirement reflects the principle the Commission applied to ensure the diversity of voices with regard to the CBC's acquisition of control of The Documentary Channel.<sup>1</sup>
27. Finally, where, in exceptional circumstances, a single entity is permitted to own more than one over-the-air television station in one language in a given market, the Commission should endeavour to ensure that the proposed buyer has the financial capacity to ensure the economic viability of the new entity to be acquired so as to be able to fulfil licence conditions in regard to Canadian content that are no less onerous than those already in place. This will help to ensure that the two stations concerned continue to “make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming.”
28. To summarize, the WGC believes that any Commission decision involving common ownership that makes an exception to the existing policy of a single entity not being allowed to own more than one over-the-air television station in one language in a given market should apply the following principles:
  - A net positive effect on the aggregate use of Canadian creative and other resources in the creation and presentation of programming in the broadcasting system, including programs in the “priority” categories, with particular attention to Canadian drama;
  - Incremental tangible benefits based on a program expenditure requirement in regard to Canadian priority programming;
  - Separate and autonomous program acquisitions, program scheduling and program management in the two entities concerned; and
  - An applicant who has the financial capacity to ensure the economic viability of the new entity to be acquired, while fulfilling licence conditions in regard to Canadian content that are no less onerous than those already in place.
29. These general principles should apply in all situations involving ownership concentration as discussed below.

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<sup>1</sup> Broadcasting Decision CRTC 2007-201, *Change in the effective control of The Canadian Documentary Channel (Assets)*.

## Specialty and Pay Television Services

30. Specialty and pay television services possess several characteristics that render industrial concentration and economic competition issues less likely to arise than for over-the-air television. For example, specialty services are generally national services, operate within in the same geographical or territorial market, and may not be competitive with one another depending on the program categories they are entitled to schedule. Specialty and pay services are also subject to a specific “nature of service” condition of licence that limits the program categories in which each service is able to operate.
31. To further examine the particular characteristics of specialty and pay services with regard to diversity of voices issues, it is useful to divide them into the four separate and distinct market segments defined by the CRTC’s regulatory framework:
  - 1) Analog specialty services;
  - 2) Category 1 specialty services;
  - 3) Category 2 specialty services; and
  - 4) Pay television services.
- 1) Analog specialty services
32. Most “analog” specialty television services operate within a distinct program category market and are also available in a digital format. In addition to the barriers to new entrants imposed by the CRTC’s overall regulatory framework, competition among the different analog specialty services is limited by so-called “genre protection”.<sup>2</sup> For example, *Space: The Imagination Station* is a specialty channel dedicated to science fiction and fantasy while *History Television* programs current events and history. Both services may air drama and documentaries but the subject matter limitations in the “nature of service” condition of licence for each channel limit the direct competition between them.
- 2) Category 1 specialty services
33. Category 1 specialty television services are defined in Public Notice CRTC 2000-171, *Introductory statement - Licensing of new digital pay and specialty services*, as a limited number of services that make a strong contribution to the development, diversity and distribution of Canadian programming and are the most attractive for early digital distribution. These services have digital access privileges and genre protection.

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<sup>2</sup> This has not prevented particular analog specialty services from trying to expand their “nature of service” conditions of licence to include program categories occupied by other analog specialty services.

### 3) Category 2 specialty services

34. Category 2 specialty services are defined in Public Notice CRTC 2000-171 as an unlimited number of services that meet basic licensing criteria and are not directly competitive with any existing pay or specialty, or Category 1 service. These services may be competitive with one another and are not assured digital access. Although there are relatively few barriers to obtaining a broadcasting licence in this category, each Category 2 specialty service must negotiate access with individual broadcasting distribution undertaking (BDU) ownership groups to obtain distribution.

### 4) Pay television services

35. Pay television services generally refer to a class of services that are free of commercial messages and available for subscription at fees much higher than specialty television services. Historically, pay services consisted of single feeds distributed on encrypted analog channels and required an encryption decoder for reception but these requirements are now being superseded by digital distribution.

36. The discussion of Canadian specialty and pay services is complicated by the fact that the broadcasting system is in a transitional period, as set out in Broadcasting Public Notice CRTC 2006-23, *Digital Migration Framework*. According to this framework, the transitional period will continue until at least January 2010 and no later than January 2013, after which time some of the distinctions among “analog”, Category 1 and Category 2 services will disappear.<sup>3</sup> However, some distinctions among these categories of service will remain. For example, according to the CRTC’s Digital Migration Framework, “Class 1, Class 2 and DTH BDUs will not be permitted to distribute an analog or a Category 1 specialty service on a stand-alone basis unless the specialty service is also distributed as part of a package.”

37. Moreover, in the environment of the Digital Migration Framework, some specialty services will be considered priority signals by the CRTC and become a part of a digital basic tier offered by BDUs.<sup>4</sup> The determination of who will benefit from this provision of the Digital Migration Framework has not yet been announced by the Commission, but such services will enjoy a special status and their ownership will be coveted.

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<sup>3</sup> “The Commission has determined that the mirroring of the existing analog tiers should continue until at least 1 January 2010. Thereafter, a cable BDU must continue to mirror any given analog tier until 85% of subscribers to that tier have a digital set-top box and are receiving one or more programming services on a digital basis, or 1 January 2013, whichever occurs first.”

<sup>4</sup> In addition to existing obligations under sections 17, 32 and 37 of the *Broadcasting Distribution Regulations*, “the Commission notes the possibility that certain specialty services may also warrant carriage on basic in a digital environment. Accordingly, the Commission is prepared to entertain, on an exceptional basis, applications for digital basic carriage. Such status would be accorded via distribution orders under section 9(1)(h) of the *Act*.”

38. In conclusion, the criteria that apply to conventional (over-the-air) television stations discussed above should also apply generally to specialty and pay television services insofar as industrial concentration and economic competition issues can affect these services. Although specialty and pay television services possess certain characteristics that render industrial concentration and economic competition issues less likely to arise than for over-the-air television, it would be possible for a common owner to try to corner the market across all specialty or pay services relating to one program category, such as category (6)(a) (professional sports), category (7)(a) (ongoing dramatic series) or category (7)(d) (theatrical feature films aired on television). Such a situation would be undesirable for the diversity of voices in the Canadian broadcasting system. The CRTC's policy that permits ownership of no more than one over-the-air television station in one language in a given market should therefore be expanded to include all television services where a "market" is defined in terms of the Commission's program categories and audience targets by age group set out in the *Television Broadcasting Regulations* (as amended from time to time).<sup>5</sup>

### **Broadcasting Distribution Undertakings**

39. Considering the growing extent of cross-media ownership and vertical integration in the digital environment, and the transition to a simpler regulatory framework, the equitable access to BDUs by programming services is a continuing concern. In and of itself, the publishing by the Commission of equitable access rules to BDUs by programming services (discussed further below) is not adequate to assure a sufficient diversity of programming voices. Since the Commission does not seem to have a general policy concerning the common ownership of BDUs, BDUs should be subject to safeguards with respect to common ownership such as those relating to structural separation set out in Decision CRTC 99-169, *Amalgamation of Cancom and Star Choice*, that are described as follows in Broadcasting Decision CRTC 2002-84, *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*:
- The undertaking must remain at all times an entity that is independent of, and legally separate and distinct from Shaw and all companies or other entities controlled directly or indirectly by Shaw.
  - None of the members of the licensee's board of directors may also be members of the board of directors of Shaw or any company or other entity controlled directly or indirectly by Shaw.
  - No employees of the undertaking, or any individual providing services on a contractual basis to the licensee (except those providing certain technical services), may at the same time be employed by Shaw or any of Shaw's

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<sup>5</sup> Schedule I of the *Television Broadcasting Regulations*, 1987 at the present time.

subsidiaries, affiliates or related companies licensed as distribution undertakings or programming undertakings, or by any broadcasting distribution undertaking controlled directly or indirectly by Shaw.

40. The WGC considers that the structural separation of BDUs that compete in the same market is important. In arriving at the conditions for structural separation set out in Decision CRTC 99-169, the Commission deemed essential certain conditions of licence requiring structural separation “in order to prevent and avoid the potential for undue preference and disadvantage that Shaw could confer through its dominant position in the cable distribution sector and its vertically and horizontally integrated corporate structure, in both programming and cable distribution.” These principles can and should be applied to all BDUs when considering common ownership issues.
41. Since the Commission does not seem to have an explicit policy concerning the common ownership of BDUs, and the case of the amalgamation of Cancom and Star Choice is cited in Broadcasting Notice of Public Hearing 2007-5, the WGC believes that safeguards with respect to common ownership such as those relating to structural separation set out in Decision CRTC 99-169 are those that should apply to BDUs in the future.

## **CONCENTRATION OF OWNERSHIP**

42. In Broadcasting Notice of Public Hearing 2007-5, the CRTC says “‘concentration of ownership’ refers to the level of market presence that an entity could have in terms of media outlets or market share (revenues or audience).”<sup>6</sup>
43. In relation to “concentration of ownership”, the Commission asks the following question, “How should the CRTC balance the need to encourage strong broadcast undertakings capable of contributing to the objectives of the Act with the need to ensure a diversity of voices in the broadcasting system?” This is the fundamental question underlying the current proceeding. There is no simple answer: it is a matter of finding the appropriate balance.
44. There exist quantitative economic indices to measure industrial concentration in a single market, such as the Herfindahl or Herfindahl-Hirschman index, but they do not embody any inherent notion of an optimal

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<sup>6</sup> The distinction in Broadcasting Notice of Public Hearing 2007-5 between “common ownership” and “concentration of ownership” is not found in the economic literature on industrial organization. In reality, the CRTC’s “common ownership” policy addresses one particular aspect of the issue of ownership concentration in a single broadcast market (also known as “horizontal integration” in the economic literature).

level of concentration and no single quantitative measure should be adopted by the Commission.

45. To address concentration of ownership, the CRTC should strive to ensure that any proposed change of ownership transaction that leads to significantly greater concentration of ownership includes the following:
- A net positive effect on the aggregate use of Canadian creative and other resources in the creation and presentation of programming in the broadcasting system, including programs in the “priority” categories, with particular attention to Canadian drama;
  - Incremental tangible benefits based on a program expenditure requirement in regard to Canadian priority programming;
  - Separate and autonomous program acquisitions, program scheduling and program management in the two entities concerned (if applicable); and
  - An applicant who has the financial capacity to ensure the economic viability of the new entity to be acquired, while fulfilling licence conditions in regard to Canadian content that are no less onerous than those already in place.
46. To help implement this principle, it is essential that the Commission maintain and publish ownership and financial information related to industrial concentration and economic competition issues. Complete public disclosure in regard to diversity of voices issues is fundamental to the public hearing process so that interveners, including the WGC, can effectively analyze and comment upon proposed ownership transfers and their impact on the diversity of voices in the Canadian broadcasting system. Unfortunately, the Commission’s published information on industrial concentration and economic competition issues is sometimes incomplete.
47. For example, the CRTC’s *Broadcasting Policy Monitoring Report 2006* suppressed the information related to Viewing Share by Ownership Group contained in the previous year’s report (Section III.A.5). And for the first time, the Commission is now refusing to divulge the financial results for 2006 of English language conventional television stations aggregated over all stations and networks, even though no confidentiality issues arise in providing this information. Transparency in the timely publication of data related to the Canadian broadcasting system is essential to the CRTC’s public hearing and decision-making processes.

## **CROSS-MEDIA OWNERSHIP INTEGRATION**

48. Cross-media ownership is an increasingly real and preoccupying issue. The consolidation of media voices by large corporate entities has reduced the volume and diversity of independent media voices, particularly in the realm

of news and public affairs.<sup>7</sup> Similar concerns can arise with regard to program acquisitions, program scheduling and program management with regard to program categories other than news, such as drama and documentaries. For example, CTVglobemedia owns both CTV and Comedy Channel and is therefore able to broadcast programs such as *Alice, I Think* and *Corner Gas* on both channels. Similarly CHUM, who owned Space, Citytv stations and A-Channel stations, scheduled programs such as *The Collector* and *Stargate: SG1* on all three services. In each case, airing the same programs on a variety of services reduced the volume of new series on the air. As consolidation increases, the ability of broadcasters to amortize their costs across multiple services is a growing concern.

49. The CRTC should strive to ensure that any proposed transaction involving significant cross-media ownership includes the following:
- A net positive effect on the aggregate use of Canadian creative and other resources in the creation and presentation of programming in the broadcasting system, including programs in the “priority” categories, with particular attention to Canadian drama;
  - Incremental tangible benefits based on a program expenditure requirement in regard to Canadian priority programming;
  - Separate and autonomous program acquisitions, program scheduling and program management in the two entities concerned (if applicable); and
  - An applicant who has the financial capacity to ensure the economic viability of the new entity to be acquired, while fulfilling licence conditions in regard to Canadian content that are no less onerous than those already in place.

## **VERTICAL INTEGRATION**

50. Considering the growing extent of cross-media ownership and vertical integration in Canada, the equitable access to BDUs of programming services (particularly those specialized in the provision of “priority” programs such as drama and documentaries) is a continuing concern.
51. Evidence suggests that concentration in the U.S. cable television industry has had the following negative effects on the variety of program services offered to viewers and consumer welfare:<sup>8</sup>

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<sup>7</sup> See, for example, Standing Senate Committee on Transport and Communications, *Final Report on the Canadian News Media*. June 2006, pp.9-14, and James S. McLean, “When Head Office Was Upstairs: How Corporate Concentration Changed a Television Newsroom,” *Canadian Journal of Communications*. Vol 30 (2005).

<sup>8</sup> Mark M. Bykowsky, Anthony M. Kwasnica and William W. Sharkey, “Horizontal Concentration in the Cable Television Industry: An Experimental Analysis,” Federal Communications Commission, OPP Working Paper No. 35, revised July 2002.

- When the number of programming networks exceeds the cable operator's channel capacity, higher levels of horizontal concentration (holding the number of buyers constant) can affect both the type and quality of television programming received by viewers and economic efficiency.<sup>9</sup>
  - Sellers representing the least popular programming networks have difficulty earning a profit in horizontal concentration environments. The more popular programming networks are much more likely to earn a profit in horizontal concentration environments.
52. Considering the degree of concentration in the ownership of Canadian distribution undertakings, specialty services whose “nature of service” condition of licence relates to the less profitable “priority” categories of programming are more vulnerable than those in the more profitable categories such as news and sports. Not only are safeguards necessary, such as the Commission’s rule requiring a BDU to offer five non-related services for each affiliated Category 2 service offered but, as stated above, BDUs should be subject to continuing safeguards with respect to “common ownership”.
53. With regard to the ownership of television production companies by television licensees, safeguards are also necessary to ensure a strong Canadian independent production sector. It is apparent from the following decisions that Commission policy has converged on the requirement by television licensees to license from independent producers no less than 75% of their original, first-run Canadian content hours of programming broadcast. This rule should be applied generally in regard to the production and broadcasting of priority programs. The following excerpts from Commission decisions provide examples of the application of this policy:
- The Commission expects the licensee to ensure that at least 75% of all Canadian priority programming broadcast by the licensee on average over the broadcast year is produced by independent production companies. For the purpose of this expectation, an independent production company is defined as a production company in which the licensee, and any company related to the licensee, owns or controls, directly or indirectly, in aggregate, less than 30% of the equity. (Decision 2001-458, *Licence renewals for the television stations controlled by Global*)

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<sup>9</sup> “Economic efficiency measures the extent to which society makes the best use of its scarce resources. In the current context, a reduction in economic efficiency indicates that fewer or socially less desirable trades occurred in the more concentrated market structure than in the less concentrated market structure. By sending the wrong price signals regarding the value society places on particular types of programming offered by programming networks, a reduction in market efficiency could affect both the type and quality of television programming received by viewers. The reduction in market efficiency also indicates that there could be a decline in the benefit society receives from the resources used in creating advertisements.” *Ibid*, pp.3-4.

- The Commission approves the application by Showcase Television Inc. to amend its commitment not to air any first-run broadcasts of programs produced by a shareholder, by replacing the commitment with the following condition of licence: The licensee shall license from independent producers no less than 75% of its original, first-run Canadian content hours. For the purposes of this condition, original, first-run means programming that has not previously been aired on any other specialty or conventional channel, regardless of whether the program was commissioned by Showcase Television. (Decision 2003-475, *Showcase – Licence amendment*)
  - The Commission considers that it is appropriate to establish obligations with respect to the use of independent production. However, a standard approach for all specialty services would not permit the Commission to consider the inherent differences that exist between one genre of specialty programming and another. Accordingly, the Commission has adopted a case-by-case approach, as measured against a 75% benchmark. Because circumstances change, it also considers it reasonable that such obligations be identified for licensees who may not currently be related to any production company. (Broadcasting Public Notice 2004-2, *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*)
  - With respect to the exhibition of independently produced programming, consistent with the approach taken in the case of a number of other specialty television undertakings, and consistent with the approach set out in Public Notice 2004-2, the Commission considers that it is reasonable to expect Teletoon Canada, for the duration of the new licence term, to ensure that a minimum of 75% of all original, first-run Canadian programming broadcast is acquired from non-related producers. (Decision 2004-12, *Teletoon/Télétoon – Licence renewal*)
54. Concerns regarding vertical integration are intensified in the presence of cross-media ownership where a single entity controls programming undertakings, production companies and distribution undertakings. The Commission's rules to encourage greater diversity of voices in the presence of both vertical integration and cross-media ownership are particularly important.
55. Consequently, the CRTC should strive to ensure that any proposed transaction involving vertical integration includes the following:
- A net positive effect on the aggregate use of Canadian creative and other resources in the creation and presentation of programming in the broadcasting system, including programs in the "priority" categories, with particular attention to Canadian drama;

- Incremental tangible benefits based on a program expenditure requirement in regard to Canadian priority programming;
- Separate and autonomous program acquisitions, program scheduling and program management in the two entities concerned (if applicable); and
- An applicant who has the financial capacity to ensure the economic viability of the new entity to be acquired, while fulfilling licence conditions in regard to Canadian content that are no less onerous than those already in place.

## THE BENEFITS POLICY

56. Article 3.(1)(b) of the *Broadcasting Act* says that the Canadian broadcasting system “makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty.” The CRTC’s benefits policy was designed to ensure that any transfer of ownership (subject to certain qualifications) is accompanied by benefits for the Canadian broadcasting system as well as for Canadian listeners and viewers. The benefits policy was not designed specifically to address the diversity of voices issue.
57. In Public Notice CRTC 1999-97, , *Building on success – A policy framework for Canadian television*, 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.] The WGC generally endorses this policy.
58. This said, the WGC considers that the tangible benefits proposed by transfer of ownership applicants should be subject to guidelines that ensure they will be incremental benefits to the Canadian broadcasting system. One of the objectives of many transfer of ownership applicants appears to be to reduce the costs of the transaction by proposing certain tangible benefits that are either non-incremental or self-serving<sup>10</sup>. The WGC is also concerned that some CRTC cross-media ownership transfer decisions allow

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<sup>10</sup> For example, the revolving bridge financing for projects licensed by CHUM authorized in CRTC Decision 2004-502, *Transfer of effective control of Craig Media to CHUM Limited*.

“social” benefits that benefit non-broadcast elements of the applicant.<sup>11</sup> The Commission should ensure that:

- (a) Tangible benefits are primarily “on-screen” benefits related to priority programs (i.e. 90% of benefits), with particular attention to drama, where applicable. These on-screen benefits should be not limited to financing production and could include the financing of development, new media and promotion provided they are directly related to, and support, priority programs.
- (b) All “On-screen” benefits are payable to independent production companies.
- (c) The incrementality of the benefits is measured against program expenditures.
- (d) “Social” benefits are directly related to the Canadian broadcasting system (for example, festivals and foundations that support Canadian broadcasting).

### **Common Ownership**

59. There are at least two occasions in which the Commission has endorsed benefit packages that exceeded the minimum level of 10% generally expected of ownership transfer applicants. Both transactions raised common ownership considerations related to the diversity of voices. In the transfer of control of CKVU-TV to CHUM (Decision 2001-647), the tangible benefits package was 11.8%.<sup>12</sup> And in the acquisition of parts of WIC Western International Communications by CanWest Global (Decision 2000-221), the Commission approved a tangible benefits package that amounted to more than 12%.<sup>13</sup> Thus, in the event that a particular transfer of ownership poses a potential risk to the diversity of voices in the system, and the Commission determines that, on balance, the transfer is appropriate, the benefits policy can serve to compensate, in part, for the increased risk associated with the decision.

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<sup>11</sup> For example, news bureaus that support print and online newsgathering as well as broadcast news such as those authorized in CRTC Decision 2000-747, *Transfer of effective control of CTV Inc. to BCE Inc.*

<sup>12</sup> Decision CRTC 2001-647, *Transfer of control of CKVU-TV Vancouver.*

<sup>13</sup> 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.*

## Priority Program Expenditure Requirements

60. Increased concentration of television ownership, cross-media ownership and vertical integration in the Canadian broadcasting system suggest that some additional measure is required to ensure that total expenditures on Canadian programs, particularly priority programs, are maintained in the new environment. Specialty and pay television services are generally subject to Canadian program expenditure requirements. However, in Public Notice 1999-97, the CRTC removed the overall Canadian program expenditure requirements for over-the-air television stations.
61. For some over-the-air stations, expenditure requirements for Canadian priority programs have been introduced in the context of ownership transfers in order to ensure that the proposed spending on priority programs is truly incremental to what was previously undertaken. For example, such expenditure requirements presently apply to CTV and TVA, as indicated by the following excerpts from the decisions indicated below:
- As a condition of approval, the Commission requires the filing of a detailed audited report, concurrently with the filing of the annual return for CTV Television Inc., setting out the actual expenditures on the base level amount of eight hours per week of priority programming in each of the next seven years. Such spending may exceed, but shall not be less than \$24.9 million in any given year. As part of this report, BCE shall also file a detailed breakdown of its expenditures each year on the priority programming and related initiatives accepted as benefits of this transaction. This reporting must demonstrate, over the seven-year period, the allocation of a minimum of \$140 million to on-screen initiatives relating to new priority programming, incremental to expenditures on the eight hours per week of such programming referred to above, and irrespective of any spending in excess of the base level of \$24.9 million per year on such programming. (Decision CRTC 2000-747)
  - Given the Commission's determination regarding divestiture of the Citytv stations, the Commission directs the applicant to provide, as part of its benefits package filing, expenditure data to determine the base level of spending in order to measure the incrementality of the benefits initiatives for the conventional television stations that it intends to retain. CTVgm should also provide a rationale for the approach to be used to determine incrementality... the Commission directs the applicant to file, in each of the next seven years, a detailed audited report concurrent with the filing of the annual return for CTV Television Inc., setting out the incremental spending on programming benefits as compared to the actual expenditures on the base level amount of eight hours per week of priority programming. (Decision CRTC 2007-165)

- In accordance with the conditions relating to the benefits package noted in *Decision CRTC 2001-384* concerning the transfer of effective control of TVA to QMI [Quebecor Média inc.], the licensee shall expend, over the licence term, a minimum of \$39.8 million on priority programming, proposed as benefits in the QMI/TVA transaction and accepted by the Commission. These incremental expenditures shall be over and above the expenditures on the 8 hours of priority programming required in section 1(a) of Appendix 1 to this decision. (Decision CRTC 2001-385)
62. For all ownership transfers involving multi-station groups or resulting in increased concentration of television ownership, cross-media ownership or vertical integration, the WGC believes that only program expenditure requirements for Canadian priority programming can ensure that ownership transfer benefits are truly incremental. Furthermore, all Canadian over-the-air television services should be subject to program expenditure requirements and the reintroduction of such requirements would help to ensure that program expenditure requirements related to ownership transfers are truly incremental.

### **Contribution to the Canadian Television Fund**

63. The creation by the CRTC of a CTF Task Force resulting in the publication of Broadcasting Public Notice CRTC 2007-70, *Call for comments on the Canadian Television Fund (CTF) Task Force Report*, is a striking example of the importance of concentration of ownership, cross-media ownership and vertical integration issues. The reason the CRTC is proposing significant changes to the objectives of the CTF at this time relates to the immense market power of Shaw Communications and Québecor Media in broadcasting. For a time earlier this year, these two conglomerates refused to respect the CRTC's requirements set out in CRTC Circular No. 426, *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and production of Canadian programming* (September 22, 1997), regarding their contributions to the CTF. As a response to Shaw and Québecor Media's actions, the CRTC is now proposing a watering-down of the CTF's requirements, as outlined below.
64. In Broadcasting Public Notice CRTC 2007-70, the Commission says,
- The Task Force has noted that the CTF is oversubscribed and that it considers that additional sources of financial contributions are desirable to support the production of Canadian programming. Its recommendation 22 proposes that the existing CRTC benefits policy be amended so that a portion of tangible television benefits be allocated to the CTF. The Commission notes that this matter will be considered as part of the Diversity of Voices proceeding.

65. The WGC is not convinced that the Diversity of Voices proceeding is the appropriate forum to discuss issues related to the financing of the Canadian Television Fund. The WGC considers that issues related to the financing of the CTF should be addressed in the fuller context of the review of the CTF Task Force Report's overall recommendations. It is not clear how the mode of financing of the CTF is related to the diversity of voices in the Canadian broadcasting system. This said, a summary of the WGC's position on tangible benefits as they relate to the CTF is outlined below.
66. The CTF has been oversubscribed since its beginnings: this is inevitable where meaningful government subsidies are available. One of the ways to reduce the demand for CTF financing is to impose tighter requirements for access. This the CTF accomplished, for example, by introducing the requirement for 10 Canadian content points. Relaxing requirements for access to CTF financing to 8 Canadian content points within a new private sector funding stream, as the CTF Task Force Report proposes, would not only undermine the fundamental objective of the CTF to support Canadian programming that 'reflects Canadian experiences', but would also increase the demand for CTF financing. Relaxing any requirements for access to CTF financing to 8 Canadian content points would therefore be counterproductive.
67. Together with maintaining the requirement for 10 Canadian content points for all CTF funding streams, the WGC is in favour of increasing the financing available to the CTF. Since one of the objectives of many transfer of ownership applicants for Canadian broadcasting licences appears to be to reduce the costs of the transaction by proposing certain tangible benefits that are either non-incremental or self-serving, the WGC proposes that the Commission require that a fixed percentage of all tangible benefits related to television broadcasting undertaking ownership transfers, say 25% of the total value of the transaction, be accorded to the CTF. Such a requirement would ensure that the tangible benefits concerned are truly benefits to the Canadian broadcasting system, will be spent on priority programming, and will not simply be recovered by the new owner.
68. However, given that the existence of benefits packages is dependent on mergers and acquisitions in the industry and is therefore inherently unpredictable, the allocation of tangible benefits to the CTF should be considered as a temporary source of additional revenue to the CTF and not as permanent.

## **OWNERSHIP OF NEW MEDIA**

69. Cross-media ownership of "new" media and "old" media should be treated in the same way with regard to the diversity of voices. In other words, the

cross-media ownership of unregulated digital broadcasting services such as mobile broadcasting (egg. MobiTV) and Internet broadcasting (egg. CTV Broadband) together with broadcasting undertakings should be treated in the same manner as the cross-media ownership of newspapers and broadcasting undertakings. The print media are not licensed by the Commission but the ownership of print media is nonetheless taken into consideration on a case-by-case basis when considering applications to transfer the ownership of broadcasting undertakings. In the same way, ownership of “new” media should be taken into consideration on a case-by-case basis when considering applications to transfer the ownership of broadcasting undertakings with a view to ensuring an appropriate diversity of voices in the Canadian broadcasting system.

70. Furthermore, the Commission should actively encourage existing broadcasting licensees to “utilize” new media in order to ensure a Canadian presence on these new platforms. This does necessarily mean, as Broadcasting Notice of Public Hearing 2007-5 suggests, that broadcasting licensees must “own” new media undertakings in order to ensure a Canadian presence on these new platforms. In the case of Internet broadcasting, it may make sense for CTVglobemedia to own the CTV website on which CTV Broadband is accessed, as well as the server on which it is hosted. However, there is no apparent need for Corus to own MobiTV, the undertaking that provides the mobile broadcasting of YTV, or for Corus to own Rogers Wireless, which carries the MobiTV service to consumers.
71. The promotion and distribution of Canadian priority programming today requires that Canadian broadcasters be active on new media platforms. The Commission should therefore encourage Canadian broadcasters to be active on new media platforms without requiring that the broadcasters own them. The central issue facing the Commission in this area is the existence of an unregulated system without Canadian content obligations that competes with a regulated system that embodies Canadian content obligations. The WGC hopes the CRTC’s planned review of the New Media Exemption Order will result in the regulation of new media and that the Commission will then develop policies to encourage a greater Canadian presence on new media platforms.

## RELATIONSHIP WITH THE COMPETITION BUREAU

72. Although matters reviewable by the Competition Tribunal include mergers, with one notable exception, the Competition Bureau has generally failed to seriously address competition or diversity of voices issues in the broadcasting sector.<sup>14</sup> This failure may stem, in part, from the mandate of the Competition Bureau. The Competition Bureau is responsible for administration and enforcement of the *Competition Act* and three labelling statutes. The purpose of the *Competition Act* is set out in section 1.1:

The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

73. Thus there is no reference to any cultural or social objectives in the *Competition Act*, such as those found in the *Broadcasting Act*. The Competition Bureau's role is to promote and maintain competition so that Canadians can benefit from competitive prices and product choices.
74. Although there is no mention of "competition" in the *Broadcasting Act*, jurisdiction over competition in broadcasting is, in effect, shared between the two agencies and, in October 1999, the Competition Bureau and the CRTC agreed on an interface document that outlines the authority of the CRTC under the *Broadcasting and Telecommunications Acts* and that of the Bureau regarding the broadcasting and telecommunications sectors. Among other things, the interface document says,

Under the *Broadcasting Act*, prior approval of the Commission is required for changes of control or ownership of licensed undertakings. Whereas the Bureau's examination of mergers relates exclusively to competitive

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<sup>14</sup> On December 21, 2001, the Commissioner of Competition filed an application with the Competition Tribunal, pursuant to the *Competition Act*, opposing the proposed acquisition by Astral Radio of eight French-language radio stations located in Quebec belonging to Telemedia and of Telemedia's 50% ownership interest in Radiomedia. Subsequently, Astral Media, Telemedia and the Commissioner of Competition entered into a consent agreement dated August 7, 2002 requiring Astral Media to sell certain of its French-language AM radio stations in Quebec. The consent agreement was registered with the Competition Tribunal on September 3, 2002, and terminated the application filed by the Commissioner of Competition with the Competition Tribunal.

effects, the Commission's consideration involves a broader set of objectives under the *Act*. This may encompass consideration of competition issues in order to further the objectives of the *Act*. The Bureau's concern in radio and television broadcast markets relates primarily to the impact on advertising markets and, with respect to broadcast distribution undertakings, to the choices and prices available to consumers. The Commission's concerns include those of the Bureau except that its consideration of advertising markets relates to the broadcasters' ability to fulfill the objectives of the *Act*. [Emphasis added.]<sup>15</sup>

75. Not only is the Competition Bureau's mandate limited to the promotion and maintenance of competition in the interests of competitive prices but the Competition Bureau restricts its analysis largely to the consideration of advertising markets and is less concerned with manifestations of market power that are not reflected in consumer prices. According to section 3 of the *Broadcast Act*, the CRTC's mandate includes the obligation "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" which is much more comprehensive than the purpose of the *Competition Act*.
76. At the bi-annual Communications Law and Policy Conference of the Upper Canada Law Society in April 2004, the current Commissioner of Competition, Sheridan Scott, a former legal counsel to the CRTC, expressed her opinion that the CRTC should be given exclusive jurisdiction with regard to competition in the realm of broadcasting. The WGC endorses this view. The Competition Bureau does not possess the mandate or expertise to find the appropriate balance between competition issues and the diversity of voices objectives of the *Broadcasting Act*. Until such time as the *Competition Act* and the *Broadcasting Act* are amended in this regard, the Interface Agreement published in 1999 should be updated to give primacy to the CRTC in matters related to the attainment of the objectives of section 3 (Broadcasting Policy for Canada) in the *Broadcasting Act*.

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<sup>15</sup> <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=815&lg=e>

## APPENDIX

### RESPONSE TO QUESTIONS RAISED BY THE CRTC IN BNPH 2007-5

#### Common Ownership of Broadcasting Undertakings

**What criteria should the Commission use in order to evaluate the impact of ownership transactions on the diversity of voices in a market?**

76. The CRTC should endeavour to construct a regulatory framework that ensures “each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming” (subject to the caveat that follows in the *Act*) and this article of section 3 of the *Act* should be an overriding principle guiding the policies of the Commission in regard to the diversity of voices.
77. Any Commission decision involving common ownership that makes an exception to the existing policy should apply the following principles:
- A net positive effect on the aggregate use of Canadian creative and other resources in the creation and presentation of programming in the broadcasting system, including programs in the “priority” categories, with particular attention to Canadian drama;
  - Incremental tangible benefits based on a program expenditure requirement in regard to Canadian priority programming;
  - Separate and autonomous program acquisitions, program scheduling and program management in the two entities concerned; and
  - An applicant who has the financial capacity to ensure the economic viability of the new entity to be acquired, while fulfilling licence conditions in regard to Canadian content that are no less onerous than those already in place.

**The Commission has approved several exceptions to the existing policy of generally one station, per owner, per market. Should this policy be retained, modified or abolished?**

78. The CRTC should retain its existing policy of no more than one over-the-air television station in one language in a given market and make an exception only where particular circumstances warrant.

**The Commission currently has no policy limiting the common ownership of discretionary services. Is such a policy necessary? If so, why?**

79. The criteria that apply to conventional (over-the-air) television stations discussed above should also apply generally to discretionary services insofar as industrial concentration and economic competition issues can affect these services.

Although discretionary services possess certain characteristics that render industrial concentration and economic competition issues less likely to arise than for over-the-air television, it would be possible for a common owner to try to corner the market across all specialty or pay services relating to one program category, such as category (6)(a) (professional sports), category (7)(a) (ongoing dramatic series) or category (7)(d) (theatrical feature films aired on television). Such a situation would be undesirable for the diversity of voices in the Canadian broadcasting system. The CRTC's policy that permits ownership of no more than one over-the-air television station in one language in a given market should therefore be expanded to include all television services where a "market" is defined in terms of the Commission's program categories and audience targets by age group set out in the *Television Broadcasting Regulations*.

**If limits on the common ownership of discretionary services are appropriate, what criteria should be used to determine these limits?**

80. The CRTC's policy that permits ownership of no more than one over-the-air television station in one language in a given market should be expanded to include all television services where a "market" is defined in terms of the Commission's program categories and audience targets by age group set out in the *Television Broadcasting Regulations*.

**The Commission reviewed its common ownership policy for radio in 2006. Are there any reasons to consider changes to the policy set out in Public Notice 2006-158?**

81. No comment.

**With respect to LMAs (Local Management Agreements), the Commission revised its policy in Public Notice 2006-158. Are there any reasons to consider changes to the policy set out in Public Notice 2006-158?**

82. No comment.

**The Commission has permitted, subject to specific safeguards, the common ownership of broadcasting distribution undertakings. In light of the evolution of the BDU sector, is this policy still appropriate?**

83. BDUs should be subject to specific safeguards with respect to common ownership.

**Are safeguards such as those set out in Decision 2002-84 effective? If not, what alternative measures would be more effective?**

84. BDUs should be subject to safeguards with respect to common ownership such as those relating to structural separation set out in Decision CRTC 99-169, *Amalgamation of Cancom and Star Choice*.

**Does common ownership of distribution undertakings raise concerns with respect to diversity of voices? If so, how should these concerns be addressed?**

85. The structural separation of BDUs that compete in the same market is an important issue. In arriving at the conditions for structural separation set out in Decision CRTC 99-169, the Commission deemed essential certain conditions of licence requiring structural separation in order to prevent and avoid the potential for undue preference which a dominant BDU could confer. The principles underlying this decision remain valid.

### **Concentration of Ownership**

**How should the Commission balance the need to encourage strong broadcast undertakings capable of contributing to the objectives of the Act with the need to ensure a diversity of voices in the broadcasting system?**

86. This is the fundamental question underlying the current proceeding. There is no simple answer: it is a matter of finding the appropriate balance.

**The Commission currently has no specific criteria for measuring concentration of ownership within the Canadian broadcasting system. Are such criteria necessary? If so, what measures would be most appropriate?**

87. There exist quantitative economic indices to measure industrial concentration in a single market, such as the Herfindahl or Herfindahl-Hirschman index, but they do not embody any inherent notion of an optimal level of concentration and no single quantitative measure should be adopted by the Commission.
88. To address concentration of ownership, the CRTC should strive to ensure that any proposed change of ownership transaction that leads to significantly greater concentration of ownership includes the principle enunciated in paragraph 77 above.

### **Cross-media Ownership or Horizontal Integration**

**The Commission established, in 2000, policies and safeguards with respect to the cross-media ownership of television undertakings and newspapers. These are set out in conditions on the relevant licences. Have these conditions of licence been effective in dealing with concerns over diversity of editorial voices?**

89. No comment.

**Is there a similar concern with respect to the cross-ownership of radio and newspapers? If so, what would be the most effective way of dealing with these concerns?**

90. No comment.

**Many Canadian broadcasters own both television and radio undertakings in the same market. Does this raise any significant concerns with respect to diversity of voices?**

91. Cross-media ownership is an increasingly real and preoccupying issue. The consolidation of media voices by large corporate entities has reduced the volume and diversity of independent media voices, particularly in the realm of news and public affairs. Similar concerns can arise with regard to program acquisitions, program scheduling and program management related to program categories other than news, such as drama and documentaries.

**Should the Commission consider measures to encourage greater diversity of voices in respect of the ownership of both radio and TV? If so, what measures might be effective?**

92. To address cross-ownership concerns concerning both radio and TV, the CRTC should strive to ensure that any proposed change of ownership transaction involving significant cross-media ownership includes the principle enunciated in paragraph 77 above.

### **Vertical Integration**

**The Commission has permitted the ownership, by one entity, of both distribution and programming undertakings. To what extent, if any, has this affected the diversity of voices in the broadcasting system?**

93. The diversity of voices in the Canadian broadcasting has been negatively affected by permitting the ownership of both distribution and programming undertakings by one entity. However, the effects have been mitigated by the Commission's policies and safeguards with respect to vertical integration of this type.

**What, if any, limits on this type of vertical integration should the Commission impose?**

94. Policies and safeguards with respect to vertical integration should continue to apply.

**What measures would be most effective in addressing the impact of this type of vertical integration?**

95. To address vertical integration of this type, the CRTC should strive to ensure that any proposed change of ownership transaction involving such integration includes the principle enunciated in paragraph 77 above.

**Currently, the Commission requires BDUs to carry five non-related services for each affiliated Category 2 service that they carry. Does this policy adequately safeguard against undue preference on the part of BDUs?**

96. No, in and of itself, this policy does not adequately safeguard against undue preference on the part of BDUs. The CRTC should strive to ensure that any proposed change of ownership transaction involving such integration includes the principle set out in paragraph 77 above.

**Television licensees are permitted to own television production companies, subject to certain safeguards. Have these safeguards been effective in dealing with concerns of preferential treatment?**

97. The safeguards have been effective.

**Has the above approach been effective in promoting a strong Canadian independent production sector?**

98. The safeguards have assisted in promoting a strong Canadian independent production sector.

**Are measures related to this type of vertical integration necessary to further the objectives of the Act? If so, what measures would be most effective?**

99. Yes, such measures are necessary. Recent Commission decisions have converged on the requirement by television licensees to license from independent producers no less than 75% of their original, first-run Canadian content hours of programming broadcast. This rule should be applied generally in regard to the production and broadcasting of priority programs.

**Are concerns regarding vertical integration intensified when a single entity controls programming undertakings, production companies and distribution undertakings? Should the Commission consider measures to**

**encourage greater diversity of voices in such situations? If so, what measures might be effective?**

100. Yes, concerns regarding vertical integration are intensified when a single entity controls programming undertakings, production companies and distribution undertakings. The Commission should consider measures to encourage greater diversity of voices in such situations.

**The Benefits Policy**

**How does the Commission's benefits policy further the diversity of voices in the broadcasting system?**

101. The benefits policy was not designed specifically to address the diversity of voices issue. However, in the event that a particular transfer of ownership poses a potential risk to the diversity of voices in the system, and the Commission determines that, on balance, the transfer is appropriate, the benefits policy can serve to compensate, in part, for the increased risk associated with the decision.

**How might changes to the benefits policy increase the diversity of voices?**

102. For all ownership transfers involving multi-station groups or resulting in increased concentration of television ownership, cross-media ownership or vertical integration, the WGC believes that similar program expenditure requirements should be applied in regard to Canadian priority programming.

**Licence Trafficking**

**Is it necessary for the Commission to develop a more formal policy with respect to licence trafficking? If so, how should "licence trafficking" be defined?**

103. No comment.

**Ownership of New Media**

**The Commission has no policies with respect to the cross-ownership of licensed broadcasting undertakings and new media undertakings. Is such a policy necessary or appropriate? If so, why? If not, why not?**

104. Cross-media ownership of "new" media and "old" media should be treated in the same way with regard to the diversity of voices. In other words, the cross-media ownership of unlicensed digital activities such as Internet services, new portable media distribution systems (including voice communications systems and

audiovisual distribution systems) or web portals together with broadcasting undertakings should be treated on a case by case basis in the same manner as the cross-media ownership of newspapers and broadcasting undertakings.

**Should the Commission actively encourage existing broadcasting licensees to own new media undertakings in order to ensure a Canadian presence on these new platforms?**

105. The Commission should actively encourage existing broadcasting licensees to “utilize” new media in order to ensure a Canadian presence on these new platforms. This does not necessarily mean that broadcasting licensees must “own” new media undertakings in order to ensure a Canadian presence on these new platforms.

**Does the cross-ownership of licensed broadcasting undertakings and new media undertakings further the objectives of the Act? If not, should the Commission intervene? If the Commission should intervene, what form should the intervention take?**

106. The cross-ownership of licensed broadcasting undertakings and new media undertakings must be dealt with on a case by case basis. The central issue facing the Commission in this area is the existence of an unregulated system without Canadian content obligations that competes with a regulated system that encompasses Canadian content obligations. The WGC hopes the CRTC’s planned review of the New Media Exemption Order will result in the regulation of new media and that the Commission will then develop policies to encourage a greater Canadian presence on new media platforms.

**Ensuring Broadcast Voices that Represent and Reflect Canada’s Diversity**

**The Commission has licensed a variety of undertakings that broadcast to specific communities, including ethno-cultural communities and Aboriginal peoples. Further, the Commission requires all broadcasters to accurately reflect Canada’s diversity through their programming. Has the increased consolidation in the Canadian broadcasting system limited or enhanced the ability of the system to accomplish these cultural diversity objectives?**

107. No comment.

**Should the Commission’s policies encourage the ownership participation of minority group representatives in the broadcasting system? If so, how?**

108. No comment.

## **Relationship with the Competition Bureau**

**The Commission and the Competition Bureau currently have an Interface Agreement published in 1999. Does this agreement clearly delineate the respective roles of the two agencies with respect to ownership transfers? If not, what areas of overlap need to be more clearly delineated?**

109. The *Competition Act* and the *Broadcasting Act* should be amended to give the CRTC exclusive jurisdiction with regard to competition in the realm of broadcasting. The Competition Bureau does not possess the mandate or expertise to find the appropriate balance between competition issues and the diversity of voices objectives of the *Broadcasting Act*. In the interim, the Interface Agreement published in 1999 should be updated to give primacy to the CRTC in matters related to the attainment of the objectives of section 3 (Broadcasting Policy for Canada) in the *Broadcasting Act*.

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