

**DIRECTORS GUILD OF CANADA AND WRITERS GUILD OF CANADA**

**Broadcasting Notice of Public Hearing CRTC 2004-5**

**CHUM Limited and Craig Media Inc.**

**August 13, 2004**

**DIRECTORS GUILD OF CANADA AND WRITERS GUILD OF CANADA**

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**Table of Contents**

**EXECUTIVE SUMMARY**

**INTRODUCTION**

**OVERVIEW OF THE TRANSACTION**

**CHUM Limited**

**Craig Media Inc.**

**Implications of the Transaction for CHUM**

**Implications of the Transaction for the Broadcasting System**

**Outline of the Proposed Tangible Benefits**

**Outline of the Proposed Intangible Benefits**

**CONCERNS WITH THE PROPOSED BENEFITS**

**The Aggregate Sale Price**

**The Exclusion of Toronto One**

**The Exclusion of the Category 2 Digital Specialty Services**

**The Size of the Proposed Tangible Benefits**

**The Nature of the Proposed Tangible Benefits**

**The Proposed Intangible Benefits**

**CANADIAN DRAMA, DOCUMENTARIES AND CRTC POLICY**

**The Decline in Canadian Drama**

**CRTC Policy on Canadian Drama**

**Long-Form Documentaries**

**PROPOSED AMENDMENTS TO THE CHUM APPLICATION**

**CONCLUSIONS**

**APPENDIX**

**A. Summary of CHUM's Proposed Tangible and Intangible Benefits**

**DIRECTORS GUILD OF CANADA AND WRITERS GUILD OF CANADA****CHUM Limited and Craig Media Inc.****EXECUTIVE SUMMARY**

1. This intervention is a joint submission to the CRTC by the Directors Guild of Canada (DGC) and the Writers Guild of Canada (WGC) regarding the application by CHUM Limited (CHUM), on behalf of Craig Media Inc. (Craig), seeking the authority to transfer the effective control of Craig to CHUM.
2. If the proposed transaction is approved by the CRTC, CHUM will become one of the “largest multi-station ownership groups” as defined by Public Notice CRTC 1999-97, *Building on Success – A Policy Framework for Canadian Television*. With this new, enhanced status come additional responsibilities, obligations and regulatory requirements that are outlined in this intervention.
3. The DGC and the WGC are not opposed to CHUM’s application to acquire Craig. However, considering the importance of this transaction, the DGC and the WGC have a number of concerns related to the benefits package proposed in the CHUM application. In the view of the DGC and the WGC, the CHUM application is deficient and should not be approved unless CHUM significantly increases the value of its proposed benefits package and its commitments to the development, production and broadcast of original independently-produced 10-point Canadian drama and long-form documentaries.
4. The DGC and the WGC are focusing on 10-point Canadian drama and long-form documentaries because these programming categories are significantly underrepresented. Canadian broadcasters reduced their demand for original Canadian drama beginning in the year 2000. As a result, the broadcast of Canadian drama during the peak viewing hours (7 p.m. to 11 p.m.), both original drama and repeats, has declined on the largest conventional networks since September 2000. Moreover, these trends are likely to worsen after August 31, 2007, once the effects of the BCE/CTV benefits package have run their course. For their part, long-form documentaries continue to be virtually absent on Canadian English-language private sector conventional television.
5. Consequently, the DGC and WGC’s recommendations are as follows:
  - CHUM should be required to meet all of the requirements of the “largest multi-station ownership groups” as set out in Public Notice 1999-97 on all

of its conventional stations, at the latest, for the broadcast year commencing September 1, 2005.

- In calculating the value of the transaction for benefits purposes, the final Purchase Price should be adjusted in regard to the Working Capital Adjustment provided for in Section 2.4 of the CHUM/Craig Sale Purchase Agreement.
- Any indebtedness that has been excluded from the definition of “Working Capital” should be added to the sale price of \$265 million in calculating the value of the transaction for benefits purposes.
- The value of Toronto One and the category 2 digital specialty services should be included in calculating the value of the transaction for benefits purposes.
- The value of the tangible benefits package should be at least 12% of the value of the transaction – commensurate with the size and nature of this transaction – bringing the total value of the benefits package to no less than \$31.8 million.<sup>1</sup>
- A minimum of \$11.8 million in new tangible benefits should be added to CHUM’s proposed benefits package of \$20 million and these benefits should relate exclusively to independently-produced 10-point original Canadian drama or long-form documentaries.
- Any additional spending requirement associated with a determination by the Commission that the value of the transaction is greater than \$265 million should focus on independently-produced 10-point original Canadian drama or long-form documentaries.
- The existing \$10.5 million in commitments for priority programming should focus exclusively on independently-produced 10-point original Canadian drama.
- Any tangible benefit related to original priority programming should be incremental to the 8 hours of priority programming that will be required on all of CHUM’s stations.
- CHUM’s so-called “intangible benefits” in regard to the proposed \$14.8 million in unfulfilled Craig benefits should not be accepted as benefits as far as this application is concerned.

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<sup>1</sup> Thus far, CHUM has proposed \$20 million (10.4% of \$192 million) in tangible benefits, leaving a tentative deficit of \$11.8 million, before final adjustments.

**DIRECTORS GUILD OF CANADA AND WRITERS GUILD OF CANADA****CHUM Limited and Craig Media Inc.****INTRODUCTION**

6. This is a joint submission to the CRTC by the Directors Guild of Canada (DGC) and the Writers Guild of Canada (WGC) regarding the application by CHUM Limited (CHUM), on behalf of Craig Media Inc. (Craig), seeking the authority to transfer the effective control of Craig to CHUM as announced in Broadcasting Notice of Public Hearing CRTC 2004-5.
7. The Directors Guild of Canada is a national labour organization representing key creative and logistical personnel in the motion picture industry. Founded in 1962, today it represents over 3,800 members in 48 different craft and occupational categories covering all areas of filmmaking: direction, production, editing and design. The DGC actively promotes the continued growth of a healthy Canadian film and television industry at both the policy and professional levels. The DGC negotiates collective agreements with the Canadian Film and Television Production Association (CFTPA) and administers and enforces these agreements for English-language production in Canada. The DGC is currently negotiating collective agreements with the Association des producteurs de films et de télévision du Québec (APFTQ) and the National Film Board of Canada (NFB). The DGC is a member of the Coalition of Canadian Audiovisual Unions (CCAU) and works with directors organizations worldwide as a member of the International Association of English-speaking Directors Organizations (IAESDO). The DGC hosts the annual DGC Awards, publishes the quarterly magazine *Montage* on the art and craft of filmmaking and administers the Directors Rights Collective of Canada (DRCC) to collect royalties and levies from secondary uses abroad.
8. The Writers Guild of Canada the WGC is the national association representing more than 1,900 screenwriters working in English-language film, television, radio and multimedia production in Canada. Screenwriters are the primary creators of Canadian productions; they are the voices that ensure our national identity is preserved. The WGC is committed to building a vibrant industry showcasing Canadian imagination and talent. For over sixty years, the WGC and its predecessor has negotiated collective agreements setting out minimum rates and terms for screenwriters with independent producers and broadcasters. The WGC has negotiated separate Independent Production Agreements with the Canadian Film and Television Production Association (CFTPA) and the Association des producteurs de films et de télévision du Québec (APFTQ) representing English and French language independent producers in Canada. The WGC also has agreements with CBC Radio, CBC-TV, CTV, the NFB and TVOntario. By hosting screenwriters' events, such as the Canadian

Screenwriting Awards, and publishing its magazine *Canadian Screenwriter*, the WGC keeps writers in the spotlight.

9. CHUM is the owner of a variety of conventional television stations in Ontario and British Columbia, as well as specialty television services and radio stations across Canada. Craig is the owner of a number of conventional television stations and digital specialty services in Alberta, Manitoba and Ontario. If the proposed transaction is approved by the CRTC, CHUM will become one of the “largest multi-station ownership groups” as defined by Public Notice CRTC 1999-97, *Building on Success – A Policy Framework for Canadian Television*. With this new, enhanced status come additional responsibilities, obligations and regulatory requirements that are outlined in this intervention.
10. The DGC and the WGC are not opposed to the CHUM application to acquire Craig. However, considering the importance of this transaction, the DGC and the WGC have a number of concerns related to the benefits package proposed in the CHUM application. These concerns are related to the ascribed value of the proposed purchase for the purpose of calculating the tangible benefits required by such a transaction, the total value of the proposed tangible benefits, the nature of these benefits, the absence of commitments to original 10-point Canadian drama and long-form documentaries, and the near absence of meaningful intangible benefits.
11. In the view of the DGC and the WGC, the CHUM application is deficient and should not be approved unless CHUM significantly increases the value of its proposed benefits package and its commitments to the development, production and broadcast of original 10-point Canadian drama and long-form documentaries.
12. This intervention summarizes the application and the benefits proposed by the applicants, identifies the DGC and the WGC’s specific concerns with regard to the proposed benefits, reminds readers of the situation regarding Canadian drama and long-form documentaries as well as the CRTC’s current policy objectives in this matter, and proposes amendments to the CHUM application that the interveners consider necessary for this transaction to proceed.
13. The DGC and the WGC wish to appear together at the Commission’s September 7, 2004 public hearing regarding the CHUM application to explain their concerns in more detail.

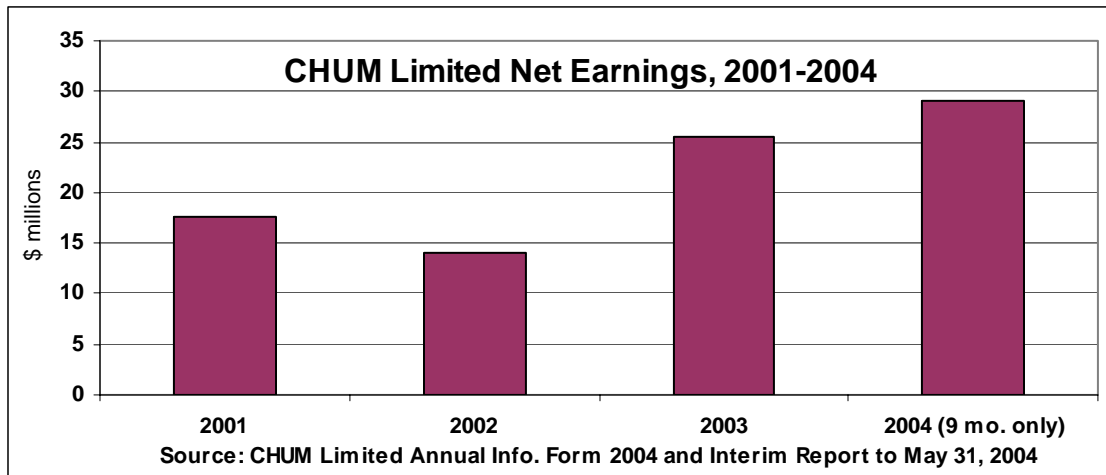
## OVERVIEW OF THE TRANSACTION

14. In an application dated May 27, 2004, CHUM Limited, on behalf of Craig Media Inc., applied to the CRTC seeking authority to transfer the effective control of Craig to CHUM who will acquire 100% of the shares of Craig.

### CHUM Limited

15. CHUM is one of Canada's leading media companies and content providers and owns and operates 8 local television stations, 18 specialty television stations and 30 radio stations. CHUM also holds a major interest in specialty services such as MusiquePlus, MusiMax, CablePulse 24 and Sun Radio Limited. As of August 31, 2003, CHUM had 3,035 employees.<sup>2</sup>
16. Financially, CHUM is very successful and recently 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.

Chart 1



17. CHUM's segmented television holdings enjoyed earnings (EBITDA) of \$57.6 million for the first nine months of fiscal year 2004 compared to \$55.5 million over the same period last year.<sup>3</sup>
18. CHUM's conventional television stations are located in Ontario and British Columbia. They include CITY-TV (Toronto, Ottawa and Southern Ontario), CKVR (Barrie and Central Ontario), CHRO-TV (Ottawa/Pembroke), CFPL-TV (London, Ontario), CHWI-TV (Windsor, Ontario), CKNX-TV (Wingham, Ontario), CIVI-TV (Victoria, British Columbia) and CKVU-TV (Vancouver,

<sup>2</sup> CHUM Limited Renewal Annual Information Form, January 16, 2004, p.31.

<sup>3</sup> EBITDA is defined as earnings before interest, income taxes, depreciation, minority interests, and interest and other income.

British Columbia).<sup>4</sup> CHUM also has a majority interest in the privately-owned educational service, ACCESS (Alberta), serving Edmonton and Calgary, Alberta.

### **Craig Media Inc.**

19. Craig Media Inc. forms one part of the Craig family's broadcasting interests that originated with the ownership of a CBC affiliate in Brandon, Manitoba, expanded outside the province, and diversified into other activities such as digital specialty television services, digital radio services and wireless distribution systems (MDS).
20. Craig Media Inc. is a privately held media company owned by the Craig family (81.1%) and a non-Canadian partner, Providence Equity (19.9%), that controls Craig's conventional television interests and three digital specialty television services – MTV Canada (Category 1), MTV2 (Category 2) and TV Land (Category 2). Craig's conventional television stations located in Manitoba and Alberta are CKX-TV (Brandon, Manitoba), CHMI-TV (Portage LaPrairie-Winnipeg, Manitoba), CKAL-TV (Calgary, Alberta) and CKEM-TV (Edmonton, Alberta) as well as CKXT-TV, also known as Toronto One, a station launched less than a year ago in September 2003. According to one report,

To finance the start up of Toronto One, Craig had sold 19.9 percent of itself – just below the legal foreign ownership limit – to Providence Equity for \$110 million. Now [January 2004], only a year into the arrangement, Providence had apparently grown nervous about Craig's chances of success and decided to pull its money out. Unable to find a new backer, Craig was ultimately forced to throw in the towel.<sup>5</sup>

21. Due to the existing presence of CHUM's two conventional stations in the Toronto television market, CHUM has committed to divest itself of Toronto One if the Commission approves the transaction.

### **Implications of the Transaction for CHUM**

22. If approved, the acquisition of Craig's conventional television stations by CHUM will result in substantial financial and strategic advantages to CHUM. According to *Broadcast Dialogue*,

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<sup>4</sup> On October 21, 2002, CHUM received seven-year licence term renewals from the CRTC for all of its conventional television stations, except CKVU-TV Vancouver. CKVU-TV was renewed for a two-year term only because of the lack of detail and clarity in CHUM's long term plans and commitments that would have been necessary to justify a seven-year licence renewal. See Broadcasting Decision CRTC 2002-323.

<sup>5</sup> Patrick Allossery, "Craig Media – a cautionary tale?" *Broadcast Dialogue*, June 2004, p.21.

In acquiring Craig's properties, CHUM has created a more cost-effective system that will enable it to pay higher sums for content and, ultimately, attract larger audiences. It now has conventional TV stations serving five of the six top markets in the country. The only major urban area it doesn't reach is Montreal.

Jay Switzer, CHUM's chief executive, told analysts and journalists in a conference call following the announcement of the deal that the acquisition provided "significant financial and strategic value" for CHUM.

"Our aspirations to grow our base in Western Canada are well known," said Switzer, pointing out that Alberta is Canada's fastest-growing TV market.

Switzer went on to say that a key benefit of the deal is that it would give CHUM the ability to generate additional revenues from its purchase of foreign program properties. "Those programs are already paid for... We will be able to take advantage of national program rights already owned by CHUM."

Switzer said Craig Media will begin carrying more CHUM programming even before the sale closes. Additional financial benefits will flow from the amalgamation of backroom functions such as sales, marketing and accounting, he said.<sup>6</sup>

23. Thus, Jay Switzer, the President and CEO of CHUM, confirms the forecast that appears in the consolidated Summary of Estimated Annual Revenues and Expenses which forms part of the CHUM application for the Craig stations. If this transaction is approved by the Commission, and after the divestiture of Toronto One, CHUM will be even more profitable than in the past as a result of additional financial and strategic benefits, including the ability to amortize existing programming more widely, that will flow from ownership of the Craig stations.

### **Implications of the Transaction for the Broadcasting System**

24. In Public Notice CRTC 1999-97, *Building on Success – A Policy Framework for Canadian Television*, the Commission defined the "largest multi-station ownership groups" as "those licensed to operate in several provinces with a potential reach of more than 70% of the audience in their language of operation." In this notice, the Commission said that "the largest multi-station ownership groups will be required to broadcast, over the broadcast year, on average at least 8 hours per week of priority Canadian programs during the 7 p.m. – 11 p.m. viewing period." The Commission also said "this

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<sup>6</sup> *Ibid*, p.20.

requirement excludes any benefit commitment made in connection with a transfer of ownership or control.”

25. In Broadcasting Decision CRTC 2002-323, that preceded the decisions renewing the licences for CHUM's eight conventional television stations, the Commission addressed CHUM's role as a multi-station television ownership group, reviewed CHUM's record in performance of that role, and assessed CHUM's plans and commitments for the upcoming licence term. Among other things, Decision 2002-323 said the following:

At the 6 May 2002 hearing, CHUM agreed with the Commission's calculations that place CHUM's national potential reach at approximately 67%, just below the threshold of 70% specified in the Commission's definition. Nor does CHUM meet the second criterion used to define a larger multi-station group in that it operates conventional television stations in only two, as opposed to several, provinces.

26. With the acquisition of Craig, CHUM would acquire conventional television stations in Alberta and Manitoba (with a reach of nearly 18%) where it previously had none and would have considerable reach in all provinces west of Quebec, except Saskatchewan.<sup>7</sup> CHUM, with 85% of national potential reach and operations in several provinces, would therefore meet the Commission's definition of a “larger multi-station group”.
27. In Broadcasting Decision CRTC 2002-323, the Commission also noted that CHUM currently adheres to conditions of licence requiring that it provide eight hours of priority programming per week on each of its television stations, except CITY-TV Toronto. At the hearing preceding Decision 2002-323, CHUM agreed to accept a condition of licence according to which CITY-TV would increase the volume of priority programming from the present level of roughly four and one-half hours to six hours in each week of the first three years, increasing to seven hours per week in year four and for the remainder of the licence term.
28. In Broadcasting Decision CRTC 2004-304 that renewed the licences for Craig's four television stations in Manitoba and Alberta, the Commission accepted an eight-hour commitment to weekly priority programming and established this level as a condition of licence.

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<sup>7</sup> In Broadcasting Decision CRTC 2004-304, the Commission said that, when launched, Craig's Toronto One station would result in an increase in Craig's potential reach (the percentage of Anglophones across Canada with access to a Craig television station), from 17.7% to 42.1%.

29. In its application to acquire Craig, CHUM has committed to 8 hours of priority programming on all of its conventional television stations, including CITY-TV.<sup>8</sup>
30. However, if the CHUM application to acquire Craig is approved, CHUM should be required to meet all of the requirements of the “largest multi-station ownership groups” as set out in Public Notice 1999-97 on all of its conventional stations – at the earliest possible date. The commitment to these requirements by CHUM should be a condition of approval for this transaction to proceed. This includes the requirement that the priority programming be broadcast during the 7 p.m. – 11 p.m. viewing period. The earliest possible date for implementation would be the date of the decision announcing approval of the transaction or, at the latest, the broadcast year commencing September 1, 2005. In other words, CHUM should not be permitted to postpone the implementation of these requirements on the pretext that the licences for most of its stations have already been renewed until August 31, 2009.

### **Outline of the Proposed Tangible Benefits**

31. In its *Policy Framework for Canadian Television* (Public Notice 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.]
32. Otherwise, the existing policy respecting the fulfilment of benefit commitments for television services, as set out in Public Notice 1993-68, *Application of the Benefits Test at the Time of Transfers of Ownership and Control of Broadcasting Undertakings*, continues to be applied. In Public Notice 1999-97, the Commission also reiterated that “the onus is on the applicant to demonstrate that the application filed is the best possible proposal under the circumstances and that the benefits proposed in the application are commensurate with the size and nature of the transaction.”
33. This section of the intervention describes CHUM’s calculations of the proposed tangible benefits. For the reasons set out in the section following, the DGC and the WGC do not agree that these benefits are “commensurate with the size and nature of the transaction.”

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<sup>8</sup> CHUM Supplementary Brief (Appendix 1A), p.19.

34. The Sale Purchase Agreement, dated April 10, 2004, between CHUM and the vendors indicates that the price to be paid to the vendors by CHUM is \$265 million subject to the Purchase Price Adjustments identified in Section 2.4 of the Agreement. From this price of \$265 million, CHUM makes several deductions to arrive at its estimate of the value of the transaction for benefits purposes.
35. Because CHUM has committed to divesting of Toronto One, CHUM has subtracted \$64 million – the value CHUM imputes to the potential sale – from the value of the transaction for benefits purposes. CHUM's price of \$64 million falls within the range of \$50 million to \$70 million that TD Securities Inc. subsequently (i.e. after the Sales Purchase Agreement was signed) estimated is the fair market value of Toronto One.<sup>9</sup>
36. In addition, CHUM asserts that the value it attributes to Craig's Category 2 digital specialty services, and other Category 2 services that have not yet been launched, should be deducted from the value of the transaction for benefits purposes. CHUM's price of \$9 million for these services falls within the range of \$7 million to \$10 million that TD Securities Inc. subsequently estimated is the fair market value of MTV2 and TV Land. TD Securities did not ascribe any value to the Category 2 services that have not yet been launched.
37. In regard to its estimated value of the transaction for benefits purposes, CHUM proposes a package of tangible benefits in the amount of \$20 million that represents 10.4% of this value. The tangible benefits are listed in APPENDIX "A" of the present intervention.
38. The DGC and the WGC's concerns with these benefits are set out further below.

### **Outline of the Proposed Intangible Benefits**

39. In its Supplementary Brief (Appendix 1A of the application), CHUM lists the following as intangible benefits that would be associated with approval of the proposed transaction:
  - (i) Benefits to Audiences in Alberta and Manitoba and the Canadian Broadcasting System
    - The "revitalization of Craig's local television stations," CHUM will become "the third major player in English-language private television" and "CHUM will be able to ensure that the best productions from independent producers from the prairies are showcased across the country."

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<sup>9</sup> *Valuation Report of TD Securities Inc.*, May 26, 2004 (Appendix 1B of the application), p.11.

- (ii) Increased Priority Programming in Toronto
  - CHUM commits to 8 hours of priority programming on all of its stations.
- (iii) Benefits for Alberta and Manitoba Producers
  - (A) Fulfilling the Commitments Under the Original A-Channel Fund
  - (B) The Continuation of the New A-Channel Production Fund
  - (C) Expanded Coverage of Prairie Productions on the National Stage
  - (D) Retention of a Local Development Office

40. Items (iii)(A) and (iii)(B) of the so-called “intangible” benefits have been quantified by CHUM in the amount of \$13.8 million. A \$1 million commitment to Craig’s existing Script and Concept Development obligations should also be added to the above list for a total of \$14.8 million in unfulfilled Craig commitments. See APPENDIX “A”.

## CONCERNS WITH THE PROPOSED BENEFITS

### The Aggregate Sale Price

41. CHUM’s calculation of the value of the transaction for benefits purposes is summarized in Table 1.

**Table 1**

### CHUM’s Estimate of the Value of the Transaction for Benefits Purposes

	<b>\$ millions</b>
Aggregate sale price	<b>265</b>
Toronto One	<b>- 64</b>
MTV2 and TV Land	<b>- 9</b>
Unlaunched category 2 digital services	<b>0</b>
<b>CHUM’s estimate of the total value for benefits purposes</b>	<b>192</b>

42. The DGC and the WGC have the following concerns with regard to CHUM’s calculation of the aggregate sale price for benefits purposes:

- (a) CHUM’s price of \$265 million falls within the range of \$222 million to \$285 million that TD Securities Inc. has subsequently estimated is the fair market value of Craig (i.e. estimated after the Sales Purchase Agreement was signed). However, TD Securities Inc. has also been retained by

CHUM to manage the sale process for Toronto One and is therefore in a situation of potential conflict of interest in providing both the “independent” CHUM valuation report for the Craig assets, and brokerage services for CHUM in regard to the sale of Toronto One.<sup>10</sup>

- (b) The value of Working Capital currently available to Craig has been accorded “confidentiality” by the Commission and is not on the public record. According to Decision CRTC 2001-647 approving the transfer of control of CKVU-TV to CHUM, the working capital adjustment with regard to CKVU-TV added some \$5 million to the value of the transaction. The Working Capital Adjustment provided for in Section 2.4 of the CHUM/Craig Sale Purchase Agreement could therefore raise the final Purchase Price above \$265 million. If this is the case, the aggregate sale price for benefits purposes should be increased accordingly, as should the value of the benefits package.
- (c) According to the Sale Purchase Agreement and CHUM’s June 21, 2004 response to Question 23 of the Commission’s deficiency questions, the amount of Craig indebtedness will be deducted from the \$265 million purchase price, and this appears to be confirmed by the definition of “Working Capital” on pages 13-14 of the agreement. However, some indebtedness has been excluded from the definition of “Working Capital” and this should be added to the sale price of \$265 million in calculating the value of the transaction for benefits purposes. According to the Sale Purchase Agreement, “Working Capital shall exclude (i) the loan receivable from Andrew Pernal, (ii) the Sony prepaid expense of approximately \$2,700,000, (iii) program rights acquired pursuant to the 2003/2004 program agreement with the Purchaser and the Expanded Programming Agreement with the Purchaser and the “Friends” program agreement with the Purchaser, (iv) amounts due from related parties, and (v) the Deferred Receivable.” [Emphasis added.] All of these assets could raise the value of working capital, if they were included. The aggregate sale price for benefits purposes should therefore be increased accordingly, as should the value of the benefits package.
- (d) There is no explanation for the debt of the Craig stations that may carry through the transaction, if approved, and continue after it is completed – as reflected in the \$15.6 million in interest payments forecast by CHUM over the next seven years.<sup>11</sup>

43. The DGC and the WGC believe that the value of the transaction for benefits purposes should be increased to take into consideration these anomalies. Unfortunately, much of the information required to make a precise estimate

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<sup>10</sup> See *CHUM Supplementary Brief* (Appendix 1A), p.48.

<sup>11</sup> Projected Financial Operations, Summary of Estimated Annual Revenue and Expenses (Def. Rep. Appendix 6)

of the appropriate purchase price for benefits purposes has been granted confidentiality by the Commission. However, the Commission possesses all of this information or can request it at the September 7, 2004 public hearing.

### **The Exclusion of Toronto One**

44. As indicated in Table 1, the value imputed to Toronto One by CHUM has been excluded from the ascribed value of the purchase in the amount of \$64 million. The DGC and the WGC do not agree with this exclusion.
45. As suggested by Question 16 in the Commission's deficiency letter of June 11, 2004, CHUM has assigned a value of \$64 million to Toronto One, which is close to the high end of the range (\$50 million to \$70 million) determined by TD Securities. Considering the station is operating at a loss, and that TD Securities is in a potential situation of conflict of interest, the \$64 million estimate appears to be intended to reduce the value of the transaction for benefits purposes.
46. In Decision CRTC 2000-221, the CRTC accepted CanWest Global's benefits package of more than 12% of the transaction's value, based on a calculation excluding the value of a 70% voting interest in CFCF-TV that CanWest Global intended to resell but, as the Commission says in its decision, this was a consequence of the Commission's denial of the authority to transfer this voting interest to CanWest Global.<sup>12</sup> In the CHUM application currently before the Commission, CHUM proposes to acquire Toronto One before reselling it.
47. CHUM proposes to ensure that, if the eventual selling price for Toronto One differs from CHUM's imputed price of \$64 million, CHUM commits to ensuring that the eventual purchaser commits to a benefits package equalling no less than \$6.4 million.<sup>13</sup> However, if for some reason the buyer of Toronto One fails to fulfil CHUM's commitment, this commitment will be very difficult for the Commission to enforce at a later date. Considering the difficulty for the Commission in enforcing such a commitment, the DGC and the WGC believe that the value of Toronto One should be included in the value of the present transaction for benefits purposes. Given that CHUM would acquire Toronto One, even if only for a short time, CHUM should be held responsible for providing the corresponding benefits – the value of which could be recouped from the potential buyer of Toronto One.

### **The Exclusion of the Category 2 Digital Specialty Services**

48. As indicated in Table 1, CHUM has also deducted the value it has itself assigned to MTV2 and TV Land (\$9 million) from the value of the transaction

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<sup>12</sup> Decision CRTC 2000-221, paragraph 49.

<sup>13</sup> CHUM June 21, 2004 Response to Deficiency Question 25, p.21.

for benefits purposes. Of this amount, \$1.5 million is attributable to MTV2 and \$7.5 million to TV Land. Both of these services are carried by three of the four largest digital distributors in Canada. The DGC and the WGC know of no valid reason for this exclusion and do not agree with such an exclusion. MTV2 and TV Land contribute to the value of the transaction and should be included in the calculation for benefits purposes.

### **The Size of the Proposed Tangible Benefits**

49. Considering the “size and nature of the transaction”, the DGC and the WGC consider that 10.4% of the value of the transaction is insufficient in the case of the CHUM acquisition of Craig. For example, in the transaction involving the transfer of control of CKVU-TV to CHUM, CHUM proposed a benefits package that represented 11.8 % of the value of the transaction.<sup>14</sup> The DGC and the WGC consider that the value of the tangible benefits should be closer to 12% of the value of the transaction – commensurate with the size and nature of this transaction.
50. Since the DGC and the WGC consider the aggregate sale price of \$265 million to be the appropriate value of the transaction for benefits purposes (before final adjustments), the appropriate value of the benefits package would be no less than \$31.8 million. Thus far, CHUM has proposed only \$20 million in tangible benefits, leaving a tentative deficit of \$11.8 million (before final adjustments).

### **The Nature of the Proposed Tangible Benefits**

51. CHUM has proposed \$10.5 million in tangible benefits for priority programming. (See APPENDIX “A”.) According to paragraph 38 of the Commission’s *Policy Framework for Canadian Television* (Public Notice 1999-97), this \$10.5 million should be applied to priority programs that are incremental to the 8 hours of priority programming that will be required on all CHUM’s stations, if CHUM’s application is approved. CHUM has made no reference to this requirement in its application.

#### **(i) Expenditures and Licence Fees related to Priority Programming (\$9 million)**

52. As indicated in APPENDIX “A”, CHUM proposes to spend \$9 million over seven years in expenditures on priority programming “primarily from Alberta and Manitoba independent producers.” According to its application, “CHUM

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<sup>14</sup> In Decision CRTC 2001-647 approving the transfer of control of CKVU-TV to CHUM, the Commission accepted CHUM’s proposed benefits package, even though the working capital adjustment added some \$5 million to the value of the transaction, because the benefits package represented 11.8% of the adjusted value of the transaction (i.e. including the positive working capital adjustment). This is a much higher percentage than the 10.4% of the unadjusted value of the transaction proposed by CHUM in the current transaction.

will ensure that a minimum of 75% of these expenditures on priority programming go to independent producers, with at least 50% of the funding going to drama-based projects.”<sup>15</sup>

53. The DGC and the WGC have the following concerns with respect to this proposal:

- The meaning of “primarily from Alberta and Manitoba independent producers.” is insufficiently clear (i.e. will a minimum of 50% of the funding or \$4.5 million go to Alberta and Manitoba independent producers?);
- The expression “drama-based” projects is ambiguous and could include unscripted reality shows rather than high quality 10-point original Canadian drama as defined by the Commission;
- It is unclear whether the 50% of “the funding” that CHUM proposes for drama-based projects amounts to \$4.5 million (50% of the \$9 million) or \$3.8 million (50% of the 75% of the \$9 million);
- According to CHUM’s proposal, up to 25% of the spending will go back to CHUM-related companies rather than to independent producers;
- Any tangible benefit related to original priority programming should be incremental to the 8 hours of priority programming that will be required on all of CHUM’s stations, if this application is approved.

(ii) Script and Concept Development related to Priority Programming (\$1 million)

54. Craig committed to \$1 million in script and concept development funding as part of their recent group licence renewal and CHUM proposes to devote an additional \$1 million toward script and concept development funding for producers based on the Prairies.

55. The DGC and the WGC have the following concerns with respect to this proposal:

- CHUM should clarify whether this \$1 million will be exclusively for producers based on the Prairies;
- Script and development funding is usually reimbursed if and when a project goes into production. CHUM should therefore commit to returning any financing that it recoups back into additional script and concept development funding and this should apply in perpetuity (otherwise, the funding constitutes a loan and the value of the benefit would be the interest forgone on such a loan);
- The additional \$1 million in script and concept development funding should be reserved for 10-point drama and long-form documentary projects only, as these categories are the most costly to develop and

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<sup>15</sup> CHUM Supplementary Brief (Appendix 1A), p.20.

produce. (Ideally, the entire \$2 million in script and concept development funding should be reserved for these categories.)

(iii) Revolving Bridge Financing (\$0.5 million)

56. CHUM proposes to make \$500,000 available for “bridge financing of CHUM supported projects to independent producers in Alberta and Manitoba... As monies are repaid they will be made available to bridge finance additional projects.”<sup>16</sup>

57. The DGC and the WGC have the following concerns with respect to this proposal:

- CHUM should clarify whether this \$0.5 million will be exclusively for producers in Alberta and Manitoba;
- The term of the bridge financing arrangement is not specified. This arrangement should be in perpetuity – otherwise it does not constitute a clear and unequivocal benefit;
- The revolving bridge financing should be reserved for 10-point drama and long-form documentary projects only, as these categories are the most costly to develop and produce.

(iv) New “Storefront” Bureaus in Lethbridge and Red Deer (\$4.2 million)

58. CHUM says it plans to increase the quality and extent of local coverage, both news and non-news, by establishing Bureaus in Red Deer and Lethbridge. However, it is not clear to what extent these expenditures represent net additions to what otherwise would be on-going news and non-news operations. As a result, the DGC and the WGC are not enthusiastic about this proposed benefit and wonder whether it should not be replaced by a more “tangible” benefit.

(v) Production of a Half-hour Cross-Cultural Program (\$2.6 million)

59. Over the next seven years, CHUM proposes to produce a new half-hour cross-cultural program based on the Prairies. The DGC and the WGC would prefer to see a strong commitment to the use of fully-scripted independently-produced programs in this proposal.

(vi) Social Benefits and Talent Development (\$2.7 million)

60. Although lacking in some details, the DGC and the WGC generally find these proposed benefits acceptable insofar as they are incremental disbursements to third parties.

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<sup>16</sup> CHUM *Supplementary Brief* (Appendix 1A), p.21.

## The Proposed Intangible Benefits

61. Among its intangible benefits, CHUM commits to 8 hours of priority programming on all of its stations but does not specify the tangible benefits that would result in original, high quality priority programming – in addition to the 8 hours that would be required by its new status. The Commission should ensure that its policy is applied in this case.
62. As is outlined in APPENDIX “A”, CHUM also presents \$14.8 million worth of Craig’s unfulfilled commitments as “intangible benefits” associated with the eventual approval of the CHUM application to acquire Craig. These commitments arise from Broadcasting Decision CRTC 2002-304 that renewed the licences for Craig’s four television stations in Manitoba and Alberta. In Decision 2002-304, the Commission imposed several conditions of licence, including those relating to independent program production in Alberta, the expenditure of \$10 million in the form of licence fees and equity investments, and \$1 million in script and concept development funding for Western Canadian producers.
63. However, the Commission’s policy on the commitment to carry out such unfulfilled benefits is very clear.

The Commission currently expects the purchaser of an undertaking to fulfil any benefits commitments that the current licensee of the undertaking has not fulfilled. The Commission considers that benefits commitments are part of the obligations of a licensee and should be implemented regardless of ownership changes. **The Commission will therefore maintain its practice of questioning the prospective purchaser in a transaction on its intentions with respect to the seller's unfulfilled benefits commitments. The Commission notes that commitments to carry out such unfulfilled benefits are not considered to be benefits on the part of the purchaser.** [Emphasis in the original.]<sup>17</sup>

64. Furthermore, “retention” of a pre-existing local development office, intangible benefit (iii)(D), can hardly be considered an acceptable benefit of the present transaction.
65. In summary, almost none of CHUM’s so-called “intangible benefits” qualify as benefits according to CRTC policy so that, in effect, there are very few, if any, intangible benefits for the Canadian broadcasting system associated with this transaction – apart from the fact that Craig would avoid possible bankruptcy.

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<sup>17</sup> Public Notice CRTC 1993-68, Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings, 26 May 1993, p.14.

## CANADIAN DRAMA, DOCUMENTARIES AND CRTC POLICY

66. The DGC and the WGC consider that the CHUM application to acquire control of Craig is deficient and should not be approved unless CHUM significantly increases the value of its proposed benefits package and its commitments to the development, production and broadcast of original 10-point Canadian drama and long-form documentaries. This section of the intervention explains why the DGC and the WGC are focusing on 10-point Canadian drama and long-form documentaries.

### The Decline in Canadian Drama

67. As outlined in several briefs submitted by the Coalition of Canadian Audio-visual Unions (CCAU), the DGC and WGC are concerned by the decline in Canadian television drama produced and broadcast in Canada over the last five years.<sup>18</sup> Moreover, the CCAU pointed out in its November 28, 2003 intervention in response to Public Notice CRTC 2003-54, that high quality, 10-point drama programs constitute the foundation on which Canadian drama should be built.

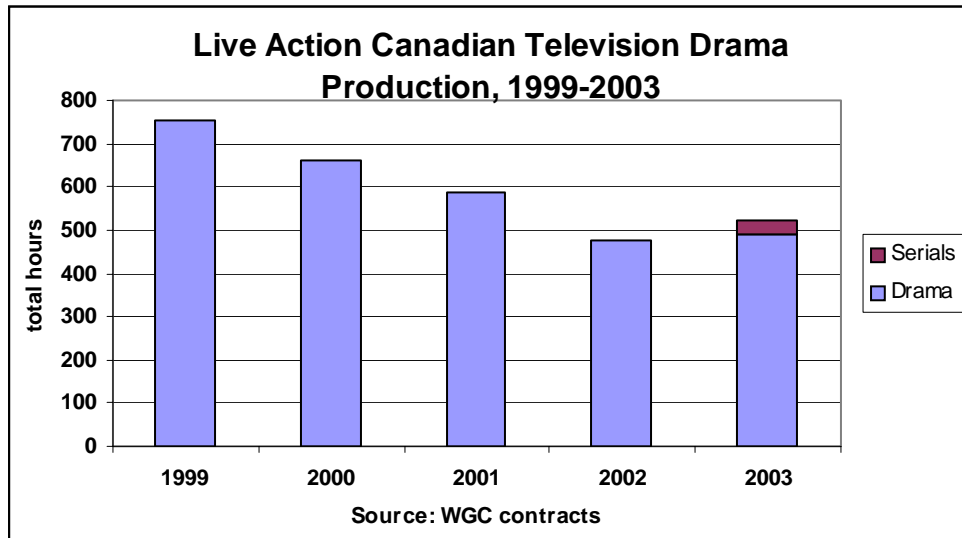
Dramatic programs made in Canada should be the cornerstone of our broadcasting system, but in order to accomplish this objective, it is important that a variety of genres of dramas be produced and broadcast in Canada. As the Commission properly notes in paragraph 10 of Public Notice CRTC 2003-54, dramatic programs consist of a number of different categories of programs, including dramatic series, sitcoms, feature films, animated television programs, made for TV movies and others. While there is a trend within our system to broadcast the more reality-based programs, it is also important that there be a strong presence and support for the high quality 10-point dramatic programs. Without the presence of these latter productions, Canadian dramas will not be able to provide the much-needed window on Canada's national culture, stories, imagination and passions. (paragraph 7)

68. Chart 2 is based on information drawn from WGC contracts and it confirms a significant decline in the production of original Canadian drama since the announcement of the CRTC's *Policy Framework for Canadian Television* in June 1999 (Public Notice 1999-97).

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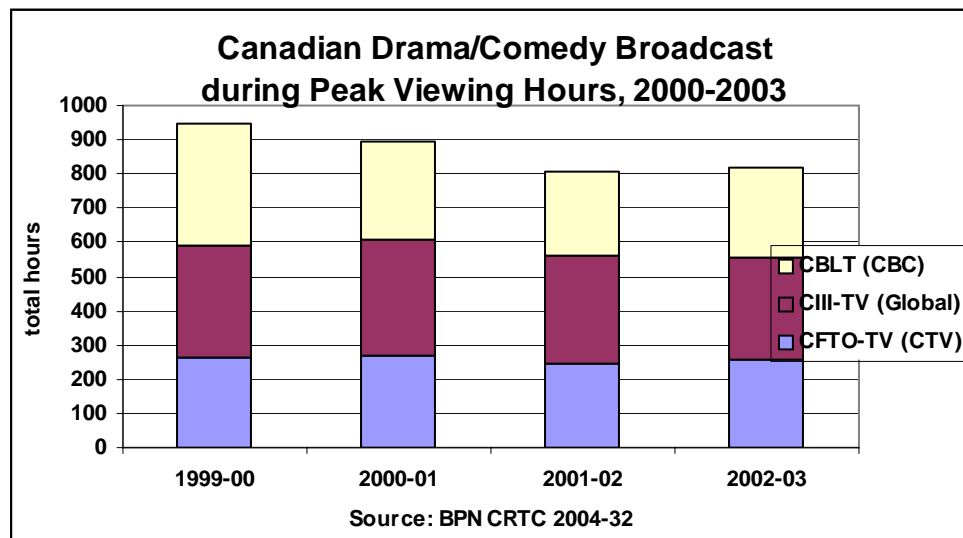
<sup>18</sup> The CCAU is a coalition of ten Canadian audio-visual unions: the Directors Guild of Canada ("DGC"), the Writers Guild of Canada ("WGC"), the Alliance of Canadian Cinema Television and Radio Artists ("ACTRA"), the National Association of Broadcast Employees and Technicians, Local 700 CEP ("NABET"), the American Federation of Musicians – Canada ("AFM-Canada"), Union des artistes ("UDA"), the Communications, Energy and Paperworkers Union of Canada ("CEP"), Association des réalisateurs et réalisatrices du Québec ("ARRQ"), Syndicat des techniciennes et techniciens du cinéma et de la vidéo du Québec ("STCVQ"), and Société des auteurs de radio, télévision et cinéma ("SARTEC").

Chart 2



69. Chart 2 indicates the total number of hours of original Canadian drama produced under WGC jurisdiction for the calendar years 1999-2003. In the chart, serial drama (e.g. *Train 48*) is separated out because it consists of low-budget programs produced in high volume and it disproportionately increases the volume of Canadian drama.
70. As Chart 2 demonstrates, Canadian broadcasters, anticipating the implementation of the Commission's *Policy Framework for Canadian Television* in September 2000 have reduced their demand for original Canadian drama since the year 2000.
71. This trend is confirmed by the Commission's own data on the broadcast of Canadian drama appended to Broadcasting Public Notice CRTC 2004-32. The CRTC's data did not include CHUM because CHUM is not yet considered to be a "larger multi-station group" by the Commission. See Chart 3.

Chart 3



72. As indicated in Chart 3, the broadcast of Canadian drama during the peak viewing hours (7 p.m. to 11 p.m.), both original drama and repeats, has declined on the largest conventional networks since the implementation of the Commission's *Policy Framework for Canadian Television* on September 1, 2000. Moreover, the trend is likely to worsen after August 31, 2007, once the effects of the BCE/CTV benefits package have run their course.<sup>19</sup>

### CRTC Policy on Canadian Drama

73. The Commission is aware of these trends and has initiated a public process intended to encourage the production and broadcast of more quality, original, English-language Canadian drama, of which Broadcasting Public Notices CRTC 2003-54 and 2004-32 form a part. Among other things, Public Notice 2004-54 says the following:

- "It is the Commission's preliminary view that effective measures to increase the availability of, and viewing to, Canadian drama programs are needed at this time and that such measures would further the objectives of the *Broadcasting Act* (the Act)." (Paragraph 18)
- "The Commission is of the view that there should be an increased emphasis on original hours of Canadian drama." (Paragraph 34)
- "In the Commission's view, the primary focus of any action to support Canadian drama should be on those programs achieving 10 points. It is these programs that are most likely to tell Canadian stories and reflect Canadian values and realities." (Paragraph 42)

<sup>19</sup> See Decision CRTC 2000-747, Transfer of effective control of CTV Inc. to BCE Inc.

## Long-Form Documentaries

74. In its *Policy Framework for Canadian Television*, Public Notice 1999-97, the Commission expanded its earlier designation of underrepresented Canadian programs and defined Canadian “priority” program categories to include long-form documentaries. At paragraph 34, the Commission said,

Canada has a rich and successful tradition of documentary production for which there is an increasing demand. This type of programming is popular around the world, and highly exportable. In addition, Canadian producers have a world-class reputation in this field. The inclusion of long-form documentaries as priority programs will ensure the continuation of this success.

75. However, long-form documentaries continue to be virtually absent on Canadian English-language private sector conventional television.<sup>20</sup>

76. The DGC and the WGC’s intention in this intervention is to encourage CHUM and the Commission to revise CHUM’s proposed benefits package with regard to the acquisition of Craig in order to reflect CHUM’s new status as a “larger multi-station group” and to increase its contribution to the Commission’s objectives identified above. An increase in CHUM’s commitment to original 10-point drama and long-form documentaries should be a condition of the approval of CHUM’s application.

## PROPOSED AMENDMENTS TO THE CHUM APPLICATION

77. The DGC and the WGC believe that the CHUM application is deficient and should not be approved unless CHUM significantly increases the value of its proposed benefits package and its commitments to the development, production and broadcast of original 10-point Canadian drama and long-form documentaries.

78. What follows are the DGC and WGC’s recommendations:

- CHUM should be required to meet all of the requirements of the “largest multi-station ownership groups” as set out in Public Notice 1999-97 on all of its conventional stations, at the latest, for the broadcast year commencing September 1, 2005.
- In calculating the value of the transaction for benefits purposes, the final Purchase Price should be adjusted in regard to the Working Capital Adjustment provided for in Section 2.4 of the CHUM/Craig Sale Purchase Agreement.

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<sup>20</sup> See *CRTC Broadcast Policy Monitoring Report 2003*, Charts 3.5 and 3.6, p.47.

- Any indebtedness that has been excluded from the definition of “Working Capital” should be added to the sale price of \$265 million in calculating the value of the transaction for benefits purposes.
- The value of Toronto One and the category 2 digital specialty services should be included in calculating the value of the transaction for benefits purposes.
- The value of the tangible benefits package should be at least 12% of the value of the transaction – commensurate with the size and nature of this transaction – bringing the total value of the benefits package to no less than \$31.8 million.<sup>21</sup>
- A minimum of \$11.8 million in new tangible benefits should be added to CHUM’s proposed benefits package of \$20 million and these benefits should relate exclusively to independently-produced 10-point original Canadian drama or long-form documentaries.
- Any additional spending requirement associated with a determination by the Commission that the value of the transaction is greater than \$265 million should focus on independently-produced 10-point original Canadian drama or long-form documentaries.
- The existing \$10.5 million in commitments for priority programming should focus exclusively on independently-produced 10-point original Canadian drama. (This would bring the total value of tangible benefits to independently-produced, 10-point original Canadian drama and long-form documentaries to \$22.3 million.)
- Any tangible benefit related to original priority programming should be incremental to the 8 hours of priority programming that will be required on all of CHUM’s stations.
- CHUM’s so-called “intangible benefits” in regard to the proposed \$14.8 million in unfulfilled Craig benefits should not be accepted as benefits as far as this application is concerned.

## CONCLUSIONS

79. In *Support for Canadian television drama – Call for comments*, Public Notice 2003-54, and in *Proposed incentives for English-language Canadian television drama – Call for comments*, Public Notice 2004-32, the

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<sup>21</sup> Thus far, CHUM has proposed \$20 million (10.4% of \$192 million) in tangible benefits, leaving a tentative deficit of \$11.8 million, before final adjustments.

Commission sought comment on the steps it might take to encourage the production and broadcast of more high quality, original, English-language Canadian drama capable of attracting larger audiences. The application by CHUM, on behalf of Craig, seeking the authority to transfer the effective control of Craig to CHUM, provides an excellent opportunity to further the Commission's objectives in this regard.

80. In the past, CHUM has had a reputation of making a relatively modest contribution to Canadian drama – particularly in the area of 10-point dramatic series. Over the last two years, as the CHUM television empire has expanded and CHUM has approached the status of a “larger multi-station group”, CHUM has begun to contribute more to 10-point Canadian drama with series such as *The Collector*, *Charlie Jade* and *Terminal City*.
81. This said, the DGC and the WGC believe that the CHUM application, as filed, is deficient and should not be approved unless CHUM significantly increases the value of its proposed benefits package and its commitments to the development, production and broadcast of original 10-point Canadian drama and long-form documentaries in keeping with the recommendations in this intervention. Rather than simply spreading its existing programming over the Craig stations, CHUM should initiate a substantial volume of independently-produced original 10-point Canadian drama and long-form documentaries if this application is to be approved.

**APPENDIX "A"****Summary of CHUM's Proposed Tangible and Intangible Benefits**

<b>Tangible Benefits</b>	
<b>Priority Programming</b>	
Expenditures and Licence Fees	9,000,000
Script and Concept Development	1,000,000
Revolving Bridge Financing	500,000
<b>Total</b>	<b>10,500,000</b>
<b>Local Programming</b>	
New "Storefront" Bureaus in Lethbridge and Red Deer (for local news and non-news in-house programming)	4,200,000
Production of a ½ Hour Cross-Cultural Program (13 episodes produced in-house)	2,615,000
<b>Total</b>	<b>6,815,000</b>
<b>Social Benefits and Talent Development</b>	
Aboriginal Media Initiatives	230,000
Educational Grants	40,000
Media Literacy	270,000
Supporting Canadian Broadcast Heritage	150,000
Developing Canadian Production Talent	680,000
Industry Support and Development	465,000
Film and Television Festivals and Organizations	850,000
<b>Total</b>	<b>2,685,000</b>
<b>Total Tangible Benefits</b>	<b>\$20,000,000</b>
<b>Intangible Benefits</b>	
Fulfilling the Commitments Under the Original A-Channel Production Fund	3,800,000
Continuing the New A-Channel Production Fund	10,000,000
Existing Commitments to Script and Concept Development	1,000,000
<b>Total Intangible Benefits</b>	<b>\$14,800,000</b>

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