



April 5, 2007

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

VIA Online: <http://www.crtc.gc.ca/eng/broadcast.htm>

Dear Ms. Rhéaume,

**Public Notices 2007-3 and 2007-3-1
Application by CTVglobemedia Inc. (CTVgm) seeking authority to transfer effective
control of CHUM Limited to CTVgm**

Introduction and Summary

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of Public Notices CRTC 2007-3 and 2007-3-1: Application by CTVglobemedia Incorporated (CTVgm) seeking authority to transfer effective control of CHUM Limited to CTVgm.
2. ACTRA requests an opportunity to appear before the Commission at the public hearing commencing April 30, 2007. ACTRA will bring to this process the particular perspective of English-language performers and the need to ensure both that Canadian creative resources are predominantly used on the public airwaves and that there is a reasonable supply of high-quality English-language drama programs and series.
3. ACTRA and its predecessor organizations have represented the interests of professional performers working in the English-language media in every region of Canada for over 60 years. ACTRA's principal function is bargaining collectively on behalf of our more than 21,000 members and others, whose performances in movies, television programs, sound recordings and digital media entertain, educate and inform Canadians and global audiences.
4. ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities are more abundant. ACTRA members also believe passionately that Canada needs a strong Canadian presence wherever entertainment and information services are created and however these are provided to Canadians. We believe in our own creativity; our capability to tell and perform our own stories. We also believe that a healthy democracy needs diversity in programming choices and editorial opinions. It is

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these beliefs that motivate ACTRA's participation in the CRTC public process.

5. We are pleased to contribute comments concerning CTVgm's acquisition of CHUM on two broad issues: first, the impact of media consolidation in reducing the diversity of voices in the Canadian system; second, the proposed tangible benefits package that will accompany this ownership transfer.
6. The present application raises significant issues about media concentration. While ACTRA looks forward to participating in the policy hearing being called by the Commission for Fall 2007, in this application ACTRA seeks the following outcome:
 - That sufficient funds from the CTVgm benefits package be made available to public interest groups to conduct comprehensive and contemporary research into media concentration issues in preparation for the Fall hearing and other related processes;
 - That the CRTC authorize no further exceptions to the common ownership policy. In the alternative, if the Commission accepts the rationale put forward by CTVgm, ACTRA urges that it approve such exceptions only with respect to the A-Channel group of stations and require CTVgm to divest the Citytv stations. The Citytv stations constitute a reasonable base on which to begin to build a third commercial network in Canada; the A-Channel stations do not.
7. For the past seven years, ACTRA and its members have been leaders in the campaign to reverse the precipitous decline in the availability of domestically produced English-language television drama. We have raised this issue publicly, with politicians and with the Commission. We continue to believe that strong actions must be taken. For this reason, in this application, ACTRA seeks the following outcome:
 - That the benefits package be configured to ensure the greatest possible benefits flow to 10-point Canadian drama programs and series produced at arms-length from CTVgm.
8. ACTRA further believes that the benefits package should be based on the full value of the transaction and should be identical for the radio and television assets. ACTRA thus seeks the following outcome:
 - That the value of the tangible benefits be increased by including the value of the debt CTVgm has acquired from CHUM, the value of the assets proposed to be divested, and by raising the percentage required for radio to the same as that required for television.
 - All additional benefits beyond those already proposed by CTVgm, a minimum of \$60.0 million, to be allocated to 10-point Canadian drama programs produced at arms-length from CTVgm.

Media Diversity/Common Ownership Policy/Fall Policy Hearing

9. The acquisition of CHUM by CTVgm raises a number of significant issues for the broadcasting system, particularly how media consolidation will reduce the diversity of voices. ACTRA believes that the increasing concentration of media ownership has failed to bring more and higher quality Canadian content to our screens yet has resulted in a

homogenization of editorial voices in Canadian news and public affairs programming. Increasing cross media ownership reduces diversity in newspapers and other media.

10. ACTRA notes that the issues of media consolidation will also be front and centre in two other takeovers that will soon come before the CRTC: the CanWest Global Communications/Goldman Sachs purchase of Alliance Atlantis Communications and the Astral Media Inc. purchase of Standard Broadcasting Corporation Ltd.
11. Unfortunately, in PN 2007-3-1, the CRTC has decided that it will limit consideration of the Commission's common ownership policy in the context of the CTVgm hearing. Instead, the CRTC will hold public hearings in Fall 2007 to "review issues relating to the *Broadcasting Act's* objective of ensuring that the broadcasting system provides Canadians with a diversity of voices."
12. While ACTRA looks forward to the opportunity to participate in this Fall's policy review, we note that the CRTC's decision to proceed with the current application under existing rules may diminish the relevance of the policy review, since the Commission's ability to influence the ownership structure of the Canadian media will be reduced with every approval it gives to a large takeover/consolidation in the intervening period. In its 13 March 2007 Press Release announcing the Fall review, the Commission stated that the application of CTVgm, as well as the pending applications by CanWest Global and Astral Media, will be assessed in light of the existing regulations and policies, rather than those that may emerge from the upcoming process.
13. ACTRA's concerns about the effects of media consolidation on the broadcasting system are shared by a number of other stakeholders. In order to prepare for the upcoming process, ACTRA believes it is essential to have authoritative, comprehensive and contemporary research and data on the issue of how media concentration has and will continue to effect Canadian broadcasting and other media; what measures should be taken to ensure adequate resources for the production and promotion of high quality Canadian drama programs and series; and the effects of new media technologies on broadcasters, distributors and telecommunications companies. Unfortunately, ACTRA and these others groups do not have the resources needed to undertake the necessary research.
14. The current application provides an opportunity in this respect. CTVgm has proposed to provide a tangible benefit in the amount of \$1.5 million "to fund such third party education and research studies as the CRTC deems most valuable." ACTRA proposes that one-half of these research funds be provided to a public interest coalition, comprised of ACTRA, other unions and guilds, associations of producers, the Canadian Film and Television Industry Coalition, and other public interest organizations such as the Friends of Canadian Broadcasting. This coalition, which perhaps could be brought together through the Canadian Centre for Policy Alternatives, an established research institute, would define the parameters, commission and oversee appropriate research and studies.

Analysis of Application

15. The Supplementary Brief appears on the surface to contain some positive statements about the benefits to be gained by CTVgm's takeover of CHUM:
 - "At CTVglobemedia, we believe that uniqueness creates value, while homogenization destroys value."

- “Our vision is to provide the means for Citytv stations to return to their original programming philosophy – a philosophy that truly set these stations apart.”
 - “CTVglobemedia will continue this relationship (100 hours a year of Canadian feature films in prime time) with the Canadian feature film community and build upon the efforts”
 - “... moreover, a well-resourced Canadian company is best positioned to facilitate high-quality Canadian content and to take the kinds of risks with content that smaller players cannot afford.”
 - “This ongoing diversity of voices will be further ensured by CTVglobemedia’s commitments to maintain separate and independent news management and presentation structures for the Citytv Stations and CTV stations.”
16. The Supplementary Brief points out that CHUM’s “conventional television operations have recorded pre-tax losses of \$68 million,” over the past decade and “even its flagship station, Citytv Toronto, has only averaged single-digit profitability over the last three years.” These results were “camouflaged by the overall success of (CHUM’s) specialty television and radio businesses.”
17. How does CTVgm propose to overcome the poor financial performance at the same time as it will “build on” CHUM’s successes and reinvigorate the brand? The Supplementary Brief is light on specifics, beyond saying that efficiencies can be achieved and infrastructures simplified. CTVgm does plan to “re-aggregate audiences” and CTV will provide “the CHUM Services with access to its excess U.S. programming that is consistent with their brands, programming niches and styles.”
18. The other significant part of the answer is found in the deficiencies letter of 29 January 2007 filed in response to questions posed by the Commission. CTVgm’s plans for overcoming the poor financial performance rest on repurposing the U.S.-licensed shows which CTV has in the Top 20 most watched programs:
- “A broadcaster’s ability to generate advertising revenue is a direct function of audience share. Audience share is, in turn, a result of the performances of individual programs within a broadcaster’s schedule and, in particular, the number of shows in the Top 20 most watched programs.”
 - “For conventional television, the strength of the schedule is measured by the amount (sic) of programs that rank in the Top 20.”
19. According to BBM, for the week of March 5-12, 2007, the Top 20 programs in Canada were all U.S. shows, with the exception of CTV’s own Evening News (11) and Corner Gas (9), as well as CBC’s Hockey Night in Canada (17). CTV programming on the list included several episodes of American Idol, CSI, CSI Miami, CSI New York, Law and Order, Amazing Race, Cold Case, Criminal Minds, The Class and Lost. The week of February 19-25, 2007 included such other programs as the Academy Awards, Barbara Walters, Grey’s Anatomy, ER and Ghost Whisperer. The knock-off program Deal or No Deal Canada replaced Hockey Night in Canada as the third Canadian program in that week’s Top 20.
20. Thus, one must conclude that the “synergy” that will bring about the revival of the Citytv stations is showing popular U.S. shows such as American Idol, Amazing Race, Academy Awards, The Class and others presently on CTV that fit with Citytv’s image of young, hip and

urban; and perhaps the CSI series, Cold Case and Lost, since these are serial dramas that also form part of Citytv's "core competencies," according to CTVgm.

21. The CTVgm commitment that no more than "10% of the overall programming aired on Citytv Stations in any broadcast week shall duplicate that aired on CTV stations," is small comfort in light of how dominant these Top 20 programs will become in the marketplace. Ten percent of the overall programming could translate into almost three prime time hours each day, for six days in each week. There is no evidence in CTVgm's submission to indicate that this worst case scenario is not what is intended with the statement that CTV will provide "the CHUM Services with access to its excess U.S. programming that is consistent with their brands, programming niches and styles." Even if the "excess" programming refers to other series for which CTV has rights, and not to those already broadcast on CTV, the overall outcome is similar: there will be more exposure of popular U.S. shows.
22. ACTRA also wishes to respond to CTVgm's comment that "advertising spending continues to migrate away from conventional television to the specialty sector and unregulated media outlets." According to figures received from the Association of Canadian Advertisers, total advertising revenues of conventional television rose from \$2.096 billion in 2001 to \$2.226 billion in 2005. While the growth of 6.2% is modest, it can hardly be considered as a migration from conventional television. What is true is that specialty channels are enjoying considerably greater growth, rising in this same period by 75.3%, from \$0.438 billion to \$0.768 billion. Overall, television advertising revenues in Canada increased by 18.0% between 2001 and 2005, a not unreasonable year over year increase. It is also true that advertisers are moving into new fields, as they always have when a new media emerges, and are now exploiting Internet opportunities as ACTRA and others have predicted for many years that they would.

Concentration of Ownership

23. In Public Notice CRTC 1999-97 *Building on Success: A Policy Framework for Canadian Television*, the commission has set out its ownership policy as follows:

"The Commission will continue its current policy which generally permits ownership of no more than one over-the-air television station in one language in a given market....This policy ensures the diversity of voices in a given market, and helps to maintain competition in each market. Most of the participants indicated that the Commission's current approach worked well and did not recommend any change."

24. ACTRA supports this position as the ownership policy restricts the concentration of ownership in a given market and permits exceptions only in very limited and specific circumstances. ACTRA submits that the CTVgm application does not meet the test for exception.

25. There are two reasons for exceptions to the ownership policy. The first is found in CRTC 2000-221:

"... (when) the Commission has permitted the purchase of an undertaking as an exception to its common ownership policy, the rationale has often been tied to concerns about the continued viability of the undertaking in question in the absence of the financial rescue promised by the purchaser."

The second is found in CRTC 2001-647:

“In the Commission’s view, the objectives of maintaining editorial diversity and fair competition remain strong and valid reasons for retention of a general policy prohibition against the ownership of more than one television station in any given market. In this case, however, the Commission finds that the current degree of concentration of voices in the hands of CanWest is very high in both broadcasting and newspapers. Placing CIVI-TV Victoria and CKVU-TV Vancouver under the single ownership of a strengthened CHUM organization should provide a more effective counter-balance to this high degree of concentration of editorial voices.”

ACTRA submits that neither of these applies to the present application. CTVgm already has a significant presence in each of these markets and an exception is not warranted for media diversity reasons. In addition, Citytv stations are not so financially weak that they could not survive independently of the CTVgm acquisition.

26. With respect to the discussion of concentration of ownership, we note as well the rather self-serving interpretation of the CRTC policies put forward by CTVgm: “The CRTC has consistently said that it is not opposed to concentration of ownership.” What the CTRC has said is this:

“Concentration of ownership within the broadcasting system is not itself necessarily of concern to the Commission, provided that there continues to be an effective degree of diversity of ownership and of programming sources to ensure that the objectives of the Act are met.”

ACTRA’s focus is on the second part of the CRTC statement. ACTRA submits that the current acquisition, when combined with CanWest Global’s acquisition of Alliance Atlantis, raises serious doubt about whether there will continue to be an “effective degree of diversity of ownership” in Canada’s national broadcasting system.

27. Further, CTVgm also notes that the “Commission has recognized that the strength and scale possessed by larger media companies is often necessary to ensure the viability of Canadian broadcasting in an increasingly globalized market.” What it fails to consider is that companies are free to grow in ways other than by taking over competitors and creating a situation of market dominance.
28. Should the CRTC approve this application as proposed, as well as CanWest Global’s acquisition of Alliance Atlantis, in national conventional television viewing, CTVgm’s share of 20.4 would be far greater than CanWest’s 14.2 share, and almost three times greater than the CBC’s 7.2 share. In specialty services, CTVgm would have a 16.7 share, compared to an 11.2 share for Corus and a 9.0 share for a combined CanWest/Alliance Atlantis. According to the figures provided by CTVgm, CTVgm and CanWest will together control two-thirds of English-language conventional television revenues in Canada and will have a market share greater than 60 percent.
29. With its proposal to integrate the Citytv stations into the CTV family and provide additional windows for the popular U.S. programs, CTVgm would become a dominant player in most of the major English-language markets. According to our analysis of figures from Nielsen for

February-May 2006, the share of the viewing to Canadian stations controlled by CTV/CHUM was the following:

Toronto	44%
Vancouver	33
Calgary	46
Edmonton	45
Winnipeg	52

Presuming CTVgm succeeds in its efforts to “re-aggregate” these markets by using Top 20 programs on the Citytv stations, this market domination will increase. ACTRA submits this situation is anticompetitive, since advertisers will have no viable option but to deal with CTVgm if they want to enter these markets.

30. CTVgm discusses its need to have a level playing field with CanWest Global in the leading markets and seeks to be able to amortize programming costs by having Twin Stick operations in Vancouver/Victoria, Toronto/Hamilton, Edmonton, Calgary and Winnipeg. ACTRA notes how concepts in broadcasting change over time. The original Twin Stick operations were designed in the early 1960s to ensure that when the CTV network came to local markets, the local privately-owned affiliates of the CBC were not disadvantaged. By ensuring continued access to local programming, as well as to the two national networks, it was a policy that favoured diversity. The next time the concept arose, it was to ensure a local presence in Victoria and Hamilton that was distinct from the dominant neighbouring markets, again a policy that favoured diversity. Now, in the view of the applicant, it has become merely a means for private broadcasters to amortize costs across a greater audience, a concept that is contrary to diversity principles.
31. ACTRA notes that, when CHUM acquired Craig Media Inc. in 2004, it was trying to develop a third national commercial network to compete with Global and CTV. It argued at the time that the acquisition would permit it to amortize the costs of acquiring national rights across a truly national market. It tried this strategy and has apparently failed.
32. The Supplementary Brief discusses the challenges facing CHUM from the explosion of new technologies and alternate content platforms. It observes that economic pressures forced the Citytv stations to veer away from the core programming vision. CTVgm also discusses how it is critical for conventional broadcasters to have programs in the Top 20. We believe it is therefore disingenuous of CTVgm to state that “the sale of the Divested Assets, and in particular the A-Channel group of stations, will provide an opportunity for the emergence of a new national player – thereby reconfiguring the broadcasting landscape once again.”
33. ACTRA submits that the CRTC should not approve any further exceptions to the common ownership policy. In the alternative, if the Commission accepts the rationale put forward by CTVgm, ACTRA urges that it approve exceptions to the common ownership policy only with respect to the A-Channel group of stations. The CRTC should, in any case, require CTVgm to divest the Citytv stations. This would seem to provide a more realistic, although in our view still unlikely, opportunity for a third national player to emerge. The Citytv stations have a stronger financial base, are much more attractive and would clearly contribute more to diversity of voices in the broadcasting system if divested by CTVgm.
34. If the CRTC approves exceptions to the common ownership policy, ACTRA would support the application of the strongest possible requirements on CTVgm to retain the independence

of the Citytv or A-Channel stations. In particular, it should fulfill all conditions of all licences, should be required to maintain separate news functions, including news gathering operations, and should ensure separation between these news functions and the newspaper assets of CTVgm and its shareholders. Some of these conditions are proposed by the applicant and ACTRA urges the CRTC to make them a condition of approving the application.

35. CTVgm has noted that Bell ExpressVu's carriage of the specialty services being acquired from CHUM Ltd. would place it in violation of the 5-1 rule respecting services in which the BDU has an economic interest. The CRTC Broadcasting Distribution Regulations provide that, for BDUs such as Bell ExpressVu,

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

36. ACTRA supports the 5-1 rule as a necessary way to prevent self-dealing to the detriment of specialty services operated by parties that are unrelated to the distribution undertaking and as an additional safeguard to prevent concentration of ownership in the system. Since the decisions on current carriage arrangements were agreed between independent entities, we accept there is a legitimate rationale to suspend the application of the 5-1 rule in the short term, however, ACTRA believes this should be only a temporary measure, since these arrangements can and will change over time. ACTRA submits that Bell ExpressVu should be given a fixed and firm timetable, perhaps five to seven years, in which to adjust its carriage arrangements to conform to the rule.

Tangible Benefits

37. The Commission's policy on benefits is set out in CRTC PN 1989-109 entitled, *Elements Assessed by the Commission in Considering Applications for the Transfer of Ownership or Control of Broadcasting Undertakings*. Under this policy:

- “An applicant is expected to propose a specific package of significant and unequivocal benefits that will yield measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system.”
- “Only those initiatives that would not be realized without approval of the proposed transfer are viewed as benefits. In order to be accepted as a benefit, the proposed expenditure must be incremental. Expenditures that would normally be considered ongoing normal responsibilities of the existing licensee will not be accepted as benefits unless that licensee, because of financial circumstances, could not implement the initiative or reasonably planned to delay such an improvement beyond the time frame proposed by the purchaser.”
- “The Commission will maintain its case-by-case approach, assessing each application on its merits and taking into account both the tangible and intangible benefits proposed.”

Tangible Benefits

- “Tangible benefits generally fall into three broad categories: operating expenditures, such as in the areas of additional staff or programming improvements; capital expenditures for technical improvements; and grants and contributions to Canadian talent or program development funds.
- “With respect to the comments regarding operating and capital expenditures, the Commission notes that, for such expenditures to be considered as tangible benefits, applicants must demonstrate that these costs would not be incurred in the ordinary course of business and that the public will benefit from their implementation.”

Maximizing Benefits for 10-Point Canadian Drama

38. ACTRA continues to be in the forefront of the campaign to raise awareness of the desperate state of English-language Canadian television drama. ACTRA believes that the CTVgm tangible benefits package should be configured to provide the greatest possible benefits to 10-point Canadian drama programs and films, produced at arms-length from the applicant.
39. After reaching a peak of \$1.11 billion in 1999/2000, the volume of production of English-language fiction programs (drama and scripted comedy) declined to only \$713 million in 2002/03. It has since risen to \$861 million in 2005/06, still more than 20% lower than the peak year (Profile 2007).
40. Producing high quality drama programs requires more creative, technical and financial resources than any other programming genre. Drama production trains, develops and employs Canadian writers, actors, directors, editors, technicians and other key creative individuals.
41. The Commission has on numerous occasions acknowledged the crucial role that dramatic programs play in our broadcasting system, and in our lives. For example, Public Notice CRTC 2003-54 states, “it is through television drama that most Canadians participate in their national culture and share in the evolution of social values and stories of human passion. Canadian drama should be a cornerstone of the Canadian broadcasting system.” In that same process, the Coalition of Canadian Audiovisual Unions (of which ACTRA is a founding member) pointed out that without a strong selection of high quality 10-point dramatic programs, Canadians will not have the window on Canada’s national culture, stories, imagination and passions.
42. In Public Notice CRTC 2004-32, the Commission added the following observation: “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*.”
43. In response to Public Notice CRTC 2006-5, the CCAU noted that the importance of drama within our broadcasting system was reiterated by most interveners who responded to Public Notice CRTC 2003-54. The Commission stated that it “received a total of 301 submissions in response to Public Notice CRTC 2003-54. A large majority of these were in agreement with the importance the Commission places on Canadian drama....”
44. Nevertheless, as has been frequently noted, audiences for English-language Canadian drama are very low compared to overall viewership of drama. According to Fall 2002 BBM data, only 5% of all viewing of drama on English-language private conventional television stations was spent watching Canadian programs (CRTC 2004-3).

45. There are a number of reasons for the decline including the shift to inexpensive reality-based television programs, the CRTC 1999 Television Policy which de-emphasized drama, the collapse of the foreign television market for Canadian producers and the uncertainty of government (and cable company) funding support, particularly through the Canadian Television Fund. But a major reason for the current state of drama production is the woefully inadequate support provided by Canada's private conventional broadcasters.
46. A 2004 study, *Through the Looking Glass*, confirms that Canada's broadcast license fees paid by Canada's private broadcasters are substantially lower than those in other countries. The study, commissioned by the Directors' Guild of Canada, the CRTC and several government departments reports that domestic license fees in the United States cover on average 81% of the costs of a television production, in the United Kingdom they can cover between 70% and 115%, while in Australia, they can cover between 35% and 85%. License fees in French Canada cover an average of 38%.
47. In English-Canada the broadcast license fees paid by broadcasters are among the lowest in the world and are as low as only 18.4% of the costs of a television production. Thus, the producer must look to other markets and public sources for close to 82% of the financing. While the 2004 study was based on earlier data, we expect the situation has not changed in the intervening years.
48. On 28 March 2007, the CRTC reported on the financial performance of television broadcasters for 2006. The results show that broadcasters decreased their spending on home grown drama and increased their spending on foreign drama. In total, Canadian broadcasters spent more than \$685 million acquiring foreign programs in 2006, up 12.2% from the previous year. Of this amount, more than \$478 million was spent on drama, an increase of 19.2% from the previous year. In the same year, Canadian broadcasters spent only \$618 million on all of their Canadian programs and just under \$71 million on drama. Spending on home grown drama dropped by 13.7% from the previous year.
49. The current application by CTVgm seeking approval to purchase Canada's third largest private conventional broadcaster provides an historic opportunity for the Commission to act to begin to change this situation.
50. ACTRA, its colleagues in the CCAU and others are concerned about the present state and future of Canadian drama programs in television. We are concerned about the level of investment; the on-air placement; the lack of adequate promotion; and the type of Canadian dramatic programs being made. ACTRA acknowledges that CTVgm has recognized the need to fund Canadian drama productions by allocating some of the transfer benefits package to drama programming. But, ACTRA believes the amount is far too low to have a significant impact on the production of new English-language Canadian drama and a positive influence on the Canadian broadcasting system as a whole.
51. Television drama is the most expensive form of programming and the least likely to be funded independently. While ACTRA acknowledges the Commission has developed a program of incentives for drama production nationally, we believe that those should not be taken into consideration in respect of this application. Further, ensuring there are significant amounts in the form of tangible benefits allocated to English-language television drama productions in this case is within the parameters of the policy for transfer expenditures, and clearly in the public interest.

52. ACTRA urges the CRTC to act in this matter by requiring CTVgm to direct more resources in this benefits package to the production of 10-point English-language Canadian drama. ACTRA proposes details below.

Proposed Level of Benefits

53. Since the concept of the tangible benefits package first appeared in the Canadian broadcasting lexicon, ACTRA has taken the position that benefits should be based on the full value of the transaction, including assets to be divested and debt acquired.
54. ACTRA submits it is inappropriate to exclude the debt since the value of the enterprise being acquired includes this amount. One can draw an analogy to buying a house. If purchasers pay \$200,000 in cash and assume a \$150,000 mortgage, they don't proudly announce to family and friends that they have purchased a \$200,000 house: they say they have bought a \$350,000 house. Further, if a contractor who recently renovated the kitchen has taken out a lien against the property in the amount of \$15,000, purchasers will take this into account in the purchase offer, since they would become responsible for it after the sale. CTVgm was aware that it was acquiring debt and was assuming obligations for the continuing payment of tangible benefits arising from CHUM's acquisition of CKVU-TV in 2001 and Craig Media in 2004. ACTRA expects that these factors were taken into account in the calculation of the CTVgm purchase offer. ACTRA urges the CRTC to establish a firm policy in this regard. This will relieve any possible confusion for parties negotiating purchase and sale agreements in the future.
55. ACTRA notes that the Directors Guild of Canada has provided an extensive analysis of why it is appropriate and fully in conformity with CRTC policy for the Commission to require that CTVgm include the full amount of its debt in the valuation of the assets and the calculation of the tangible benefits that are to be paid. ACTRA endorses the DGC conclusion.
56. ACTRA emphasizes that, when the \$270 million debt is included in the valuation, an additional \$27 million benefits become due, since CTVgm has argued that the debt relates exclusively to the television assets being acquired and thus requires a 10% package of benefits. ACTRA proposes that these benefits should be allocated to 10-point Canadian drama produced at arms-length from CTVgm.
57. With respect to the issue of removing the value of the assets that are to be divested, ACTRA submits there is a loophole in the current benefits policy that allows multi-staged transactions to devalue benefits obligations. We urge the Commission to address it here. ACTRA supports the observations in the CCAU response to Public Notice CRTC 2006-5 as follows:

“The current policy effectively opens the door to a multi-staged approach to the transfer of ownership and control of broadcasting undertakings, as well as major ownership restructurings, (allowing) parties to avoid payment of substantial benefits (that were) intended by the policy. Specifically, parties could divide a transaction into stages and only at the final transaction, when a new controlling shareholder appears, would benefits be payable. The benefits payable on that final stage would of course, be only a small percentage of the benefits which would have been payable if the entire ownership transfer transaction had taken place in a single step. The Commission should act now to close this loophole.”

CTVgm has itself proposed to address this loophole. "...in the event that the total amount of proceeds for assets to be sold to third parties is less than \$150 million ..., CTVgm undertakes to propose additional benefits to compensate for any shortfall, in accordance with the applicable benefits policy." While we acknowledge this is one way to close the loophole, ACTRA believes that the more fundamental issue is that the CRTC policy should state that benefits are to be paid on the full value of the transaction and not be discounted in any way for a proposed or contingent future sale of assets.

58. The value of each transaction is based on a variety of complex and intersecting factors, and each transaction is unique. ACTRA submits that the benefits package should be based on the final outcome of the negotiations, since this figure is fixed, firm and public. It should not be discounted in any way. Each contingent subsequent transaction should similarly require an appropriate benefits package.
59. Accordingly, ACTRA believes that the benefits package should be based on the full value of the assets that CTVgm has acquired which is comprised of the cash value paid to shareholders of \$1.365 billion, plus the acquired debt of \$.270 billion = \$1.635 billion.
60. With respect to the valuation of the television assets relative to the radio assets, ACTRA would simply note that the challenges confronting CHUM that were detailed in the Supplementary Brief are greater for radio than they are for television. Radio is threatened far more by the new distribution technologies that are facing the music industry globally. Sales of CDs have declined dramatically in this decade as consumers increasingly download digital quality music to personal devices. Radio stations whose format is based on attracting a younger demographic through popular music may be a dying breed. Consequently, ACTRA wonders if the valuation of CHUM's radio assets has been affected by the benefits issue. CRTC policy decisions generally require that 6% of the value of the transaction involving radio assets should be allocated as tangible benefits, compared to 10% for television. ACTRA believes the values should be equivalent and set at the rate established for television.
61. Accordingly, ACTRA proposes that the CRTC require a benefits package in the total amount of \$163.5 million (\$1.635 billion @ 10%).
62. ACTRA further proposes that the amount beyond that which is proposed by CTVgm, or \$60.0 million (\$163.5 million - \$103.5 million), be directed to 10-point drama produced independently of CTVgm. Because of Citytv's special commitment to the Canadian feature film industry, this amount could include dramatic feature films. We would like to highlight that, in Public Notice 1989-109 the CRTC stated that benefits could include, "contributions to Canadian talent or program development funds."

Analysis of Proposed Benefits

63. ACTRA supports the Commission's policy, regarding transfers of ownership, of defining a "benefit" as something that would not happen otherwise and must be additional for the system. We believe expenditures which broadcasters would make ordinarily in running their businesses should not count as a benefit. It may well be a useful and positive expenditure,

but to qualify as a benefit, there needs to be something more. Only those initiatives that would not be realized without approval of the proposed transfer are viewed as benefits.

64. CTVgm proposes a tangible benefits package of \$103.5 million, \$27.0 million for CHUM's radio assets and \$76.5 million for CHUM's television assets that are to be retained by CTVgm. The following comments address how CTVgm proposes to allocate these benefits.
65. If the CRTC does not accept the proposal put forward by ACTRA in paragraphs 61 and 62 concerning additional benefits that should be required and directed to 10-point Canadian drama, then ACTRA proposes that two-thirds of the total benefits package proposed by CTVgm be allocated to 10-point Canadian drama. This amount, or \$68.31 million (\$103.5 x 66 2/3%), should go to programs and series produced at arms-length from CTVgm. The balance of the benefits package would then need to be restructured.
66. If the CRTC accepts the proposal in paragraphs 61 and 62, we would offer the following comments about the remaining benefits.
67. CTVgm has proposed that \$65 million of the benefits be allocated for "new incremental priority programming initiatives," under the heading On the Screen and Pipeline to the Screen Benefits.
68. ACTRA supports the \$3.5 million allocated to Writer Only Drama Development program. A good drama requires a good script and there is far too little spent in Canada developing projects. We also strongly support the concept that funding is available to individual creators and is not contingent on the involvement of a producer.
69. ACTRA also supports the following elements of the development program:
 - \$2.25 million to the development of drama for the Aboriginal Peoples Television Network
 - \$1.0 million to promote diversity at the National Theatre School of Canada
 - \$1.0 million to support the Writers Guild of Canada Diverse Writers Immersion Program.
70. The centerpiece of CTV's benefits package aimed at production would appear to be the proposed Trendsetters and Risk-takers initiative and the Stories about Music films, which together are to receive \$40.75 million. As a centerpiece, we find the amount of the commitment, when spread out over the seven year term, to be so modest as to be neither trendsetting nor risk-taking. While CTVgm suggests that the Trendsetters initiative is directed at the challenges of "securing financing for more than 13 episodes of a given series" and financing extensions of such series, at a value of slightly less than \$4.4 million per year, realistically it will be able to make a difference to perhaps only one series each year. Similarly, at a value of slightly over \$1.4 million each year, the Stories about Music could be a singular well told story with competitive production values, or two or three modestly told stories.
71. In Profile 2007, the average budget for English language fiction programming is reported to be \$1.3 million per hour. We note that despite an increase in budgets over the previous year, they remain well below average budget rates for drama observed during the 1990's according to Profile 2007. In order for the allocation for drama productions to be meaningful in this benefits package, it is essential that the threshold for such drama be set at levels that reflect the reality of the industry. While a one-hour drama with a production budget of \$1.3

million will employ the greatest number of Canadians and is more likely to have the greatest potential to attract audiences, this budget falls well short of the far more expensive U.S. productions, which consequently have considerably greater production values. The CRTC's policy should support the highest possible production budgets for Canadian drama since these will have the best chance of competing with the U.S. imports.

72. With respect to how this money should be distributed, ACTRA notes that CTVgm appears to be proposing to make all of the decisions itself. ACTRA prefers that such revenues flow through established production funds, which are directed by independent boards and which allocate money only to independent producers. This is also in keeping with the CRTC policy. In the alternative, if the Commission were to permit CTVgm to retain this responsibility, we suggest that the Commission require that it be directed to arms-length producers and that CTVgm be held to the same strict standards of reporting and auditing as the Commission required in its decision in respect of the BCE/CTV benefits package, in order to ensure the allocations remain truly additional to normal business expenses (Appendix II to Decision CRTC 2000-747).
73. ACTRA supports the \$6.0 million allocated to Bravo! Centre Stage noting only that this also is a modest commitment when amortized over seven years. However, there are virtually no performing arts and visual arts programs produced in Canada at the present time. Given that Bravo! is involved in this programming genre, it is appropriate for a portion of the benefits package to flow to it. As with drama, ACTRA submits that these funds should be allocated to programs produced at arms-length from CTVgm.
74. ACTRA is concerned about the proposed Canada Rocks for the Cause component of the production program. ACTRA notes that musicians and other performers regularly donate their time and talent to promote and raise money for good causes. Our members and other Canadian performers are world leaders in this respect. When we make a contribution, we expect that our partners in the industry will join with us and indeed Canadian broadcasters, technicians and suppliers have also generously given their resources, time and talent. Whether it is raising money for a disaster relief fund, for alleviation of poverty in Africa, or the annual Easter Seals Telethon, everyone in the community pulls together. ACTRA's concern about this proposed benefit is only that we do not see how this can be considered as incremental in nature, since it already happens on a regular and ongoing basis. Accordingly, ACTRA proposes that this \$5.5 million be directed to the Trendsetters and Risk-takers initiative.
75. Similarly, while we endorse fully all campaigns which are directed at promoting "Canadian underserved programming," particularly drama, we cannot accept that the proposed Third-Party Promotion component of the package is incremental. CHUM did and should have been spending money on promotion, CTV should be doing it, and all other broadcasters should be devoting significant resources to promoting Canadian programs. Indeed, many broadcasters argue that their Canadian programming is their competitive advantage. Accordingly, ACTRA proposes that this \$5.0 million be directed to the Trendsetters and Risk-takers initiative.

Social Benefits

76. CTVgm has proposed social benefits in the total amount of \$11.5 million, most of which would be spread over seven years. It is difficult to offer comments on specific elements of the package, since there are few details about exactly what programs will be supported and who the recipients will be.
77. However, ACTRA is concerned that some of the proposed benefits are not incremental. For example, the proposals to fund additional activities related to Local and Regional Film Festivals and Initiatives and those under Industry Connections are problematic. In both of these areas, the activities and programs are, and should be, permanent. We need film festivals and we need professional development opportunities. Funding them should be part of the responsibility assumed by broadcasters to their community, and these events and programs should not have to rely on funds allocated as a result of transfers of ownership. Both Citytv and CTVgm have provided such support for many years, and the exact nature of the support and the special initiatives funded can change from year-to-year. For this reason, ACTRA submits that these should be rejected as a benefit and the proposed amounts transferred to the Trendsetters and Risk-Takers initiative. In the alternative, ACTRA expects that the CRTC will work closely with the organizers of these events and activities to ensure that the funding support is truly incremental.
78. ACTRA supports the proposal to provide \$1.5 million “to fund such third party education and research studies as the CRTC deems most valuable.” ACTRA proposes that one-half of these research funds be provided to a public interest coalition, comprised of ACTRA, other unions and guilds, associations of producers, the Canadian Film and Television Industry Coalition, and other public interest organizations such as the Friends of Canadian Broadcasting. This funding would support contemporary research and collection of data on the issue of how media concentration has and will continue to effect Canadian broadcasting and other media; what measures should be taken to ensure that adequate resources find their way into the production and promotion of high quality Canadian drama programs and series; and the effects of new media technologies on broadcasters, distributors and telecommunications companies. The coalition, which perhaps could be brought together through the Canadian Centre for Policy Alternatives, an established research institute, would define the parameters, commission and oversee appropriate research and studies.

Tangible Benefits – Summary of ACTRA Position

CTVgm Proposal	ACTRA Response	ACTRA Proposal
Equity value of acquired assets: \$1.365 billion Benefits to be paid net of value of divested assets and acquired debt.	Value of transaction: \$1.635 billion	Benefits to be paid on full value of the transaction. All additional benefits, or \$60.0 million, to be allocated to 10-pt. Canadian drama produced at arms-length from CTVgm.
Benefits: Radio @ 6% = \$27 million TV @ 10% = \$76.5 million	Same percentage for radio and television. ACTRA supports a 15% tangible benefits package if	If CRTC rejects ACTRA proposal above, then 2/3 of benefit, or \$68.31 million to be allocated to 10-pt. Canadian drama produced at

	CTVgm receives an exemption to the common ownership policy.	arms-length from CTVgm. Remaining benefits to be rebalanced.
Radio Benefits		
StarMaker/Fonds RadioStar	\$ 13.5 million	No comments
FACTOR	8.9 million	ACTRA Supports
Aboriginal Voices	1.0 million	ACTRA Supports
CARAS	1.0 million	No comments
Television Benefits		
Development:		
Writers-only Drama	\$ 3.5 million	ACTRA Supports
APTN Drama Development	2.25 million	ACTRA Supports
National Theatre School	1.0 million	ACTRA Supports
WGC Diverse Writers	1.0 million	ACTRA Supports
Production		
Trendsetters and Risk-Takers	30.75 million	Given costs of production, this is a modest commitment. All funds to be allocated to 10-pt. Canadian drama produced at arms-length from CTVgm.
Stories About Music	10.0 million	Given costs of production, this is a modest commitment. All funds to be allocated to arms-length productions.
Bravo! Centre Stage	6.0 million	ACTRA Supports Funds to be allocated to arms-length productions
Canada Rocks for the Cause	5.5 million	This is not incremental. These funds to be transferred to Trendsetters.
Third-Party Promotion	5.0 million	This is not incremental. These funds to be transferred to Trendsetters.
Social Benefits		
Diversity	\$ 3.0 million	Inadequate information to determine if benefits are necessary and incremental.
Industry Connections	3.0 million	This is part of the normal cost of doing business and is not incremental. These funds to be transferred to Trendsetters.
Local and Regional Film Festivals and Initiatives	2.0 million	This is part of the normal cost of doing business and is not incremental. These funds to be transferred to Trendsetters.
Media Education	1.5 million	Inadequate information to determine if benefits are

		necessary and incremental.
Research and Education	1.5 million	ACTRA supports and proposes that 50% of research benefit flow to public interest research and data collection.
Broadcast Heritage	0.5 million	ACTRA Supports

Any exception to common ownership policy should bring greater benefits

79. ACTRA takes the position that the CTVgm acquisition of CHUM does not qualify for an exception to the CRTC common ownership policy. In the alternative, ACTRA argues that the exception should be limited to the A-Channel group of stations. In the further alternative, ACTRA submits that, if CTVgm obtains approval to maintain ownership of the Citytv stations and thus has two over-the-air television licences in each of the five English-language markets, CTVgm will be fundamentally transformed. It will be the dominant player in Canadian television. Providing for tangible benefits in the amount of 15% of the value of the transaction may be an appropriate and reasonable amount for CTVgm to return directly to the communities and to the broadcasting system in exchange for achieving such a dominant market position through this acquisition.

80. ACTRA notes that benefits in excess of 10% have been provided in other cases. For example, in Decision CRTC 2000-221 approving Global Communications Ltd.'s acquisition of WIC's indirect ownership of five licences in major markets, including two in which it already had licences, the applicant provided tangible benefits of close to 12%. CBC provided tangible benefits in the amount of 35% when it acquired Country Canada and Alliance Atlantis provided benefits in the amount of 10.8% when it acquired Salter Street's assets. The current application would appear to be a leading example of an application in which additional benefits should be paid. ACTRA would thus support a tangible benefits package based on 15% of the value of the transaction should the CRTC authorize exceptions to the common ownership policy with respect to the Citytv stations.

81. If the CRTC accepts the ACTRA submission in whole or in part and requires a tangible benefits package of greater than 10%, ACTRA proposes that all additional benefits be allocated to 10-pt. Canadian drama programs and series produced at arms-length from CTVgm.

Maximizing Benefits to 10-point Canadian Drama

82. To further summarize, here is how ACTRA is proposing to maximize the benefits that flow to 10-point Canadian drama programs produced at arms-length from CTVgm.

- a) Additional benefits payable if calculated at 10% of the full value of the transaction = \$60.0 million PLUS the amounts calculated in subsection c).
- b) In the alternative, 2/3 of the total benefit proposed by CTVgm = \$68.31, with the balance of benefits to be re-configured.

- c) CTVgm proposed Trendsetters and Risk-Takers, \$30.75 million + \$15.5 million reallocated from the following disqualified benefits = \$46.25 million:
 - Canada Rocks for the Cause - \$5.5 million
 - Third-Party Promotions - \$5.0 million
 - Industry Connections – \$ 3.0 million
 - Local and Regional Film Festivals - \$ 2.0 million
- d) Should the CRTC require the benefits package to be greater than 10%, all additional benefits would be allocated to 10-pt. Canadian drama programs.

Intangible Benefits

- 83. In the Supplementary Brief, CTVgm suggests that an intangible benefit from its acquisition is that “CTVglobemedia’s ownership of the Citytv Stations would provide these stations with the financial security required to ensure their survival. It would also provide these stations with the stability to return to their original programming philosophy and ensure continued diversity within the Canadian television industry.”
- 84. As we have discussed above, ACTRA believes strongly that CTVgm should not be permitted to retain ownership of the Citytv group of stations as this would provide them with a dominant market position in the major English-language markets. If the CRTC approves further exceptions to its common ownership policy, and we would urge it not to do that in the current application, it should do so only with respect to the A-Channel group of stations.

Conclusion

- 85. Allan Waters became a Canadian broadcasting pioneer when he acquired Toronto’s CHUM radio station in 1954. Along with many others who came before and after, like Ted Rogers sr., Stuart Craig, Charles Allard, Frank Griffiths, John Bassett, Wilf Woodhill and Nate Nathanson, he brought his own perspective and flare to this unique business. He carved out a distinct niche; there was no mistaking the CHUM brand, first in radio and later in television.
- 86. The world has changed enormously since 1954. A broadcasting system that was once small and local has now become interconnected, nationally and globally. A system that was once dominated by small entrepreneurs is now the domain of a very few, very large, increasingly integrated corporations. In this great interconnected digital world of giant national and multinational firms, the challenge of ensuring we have a diversity of voices in our system is no longer one that can be met by individual entrepreneurs acting on their own. In many ways, they have passed the torch to our regulators.
- 87. In the next few months, the CRTC will have an historic opportunity, perhaps its last, to ensure we have a diversity of editorial opinions, a diversity of programming styles and formats, a diversity of voices in Canadian broadcasting. It will also have an opportunity to act decisively to support the production of Canadian drama programs. We owe it to Allan Waters and the other visionaries of Canadian broadcasting to seize this opportunity.
- 88. ACTRA urges the Commission to take a bold and creative approach to the current application. You have the opportunity to take a giant step toward ensuring the Canadian system has a vibrant set of distinct voices in television. You also have an opportunity to take a giant step toward reinvigorating Canadian television drama, a genre that is essential for economic and cultural reasons. Please take these steps.

89. We thank the Commission for this opportunity to provide our comments and we are pleased to have an opportunity to appear at a public hearing before the Commission to expand on our concerns and proposals and to reply to any questions.

All of which is respectfully submitted.



Stephen Waddell
National Executive Director
ACTRA

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