



Filed via epass

10 August 2007

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

Dear Mr. Morin:

Re: Application No. 2007-0700-5 (the “Application”) by CanWest Media Works Inc. (“CanWest”), on behalf of Alliance Atlantis Communications Inc. (Alliance Atlantis), seeking authority for the transfer of effective control of Alliance Atlantis’ broadcasting companies to CanWest – Broadcasting Notice of Public Hearing CRTC 2007-11, Item 1

A. Introduction

1. This is an intervention pursuant to Broadcasting Notice of Public Hearing CRTC 2007-11 by the Coalition of Canadian Audio-visual Unions (“CCA”) in opposition to the application by CanWest MediaWorks Inc. (“CanWest”) on behalf of Alliance Atlantis Communications Inc. (“Alliance Atlantis”) seeking authority for the transfer of effective control of Alliance Atlantis’ broadcasting companies to a corporation (“Amalco”) that will be controlled by a corporation (“Jointco”) that will be owned by CanWest and GS Capital Partners (“GSCP”), a private equity affiliate of Goldman, Sachs & Co.
2. For the purposes of this intervention, CCAU represents the following Canadian audio-visual unions: the Alliance of Canadian Cinema Television and Radio Artists, the Directors Guild of Canada, the National Association of Broadcast Employees and Technicians, Local 700 CEP, the Writers Guild of Canada, and the Communications, Energy and Paperworkers Union of Canada.
3. As discussed in detail below, CCAU opposes the application because approval by the Commission would give GSCP and its affiliates, which are non-Canadians, overwhelming control in fact of both Alliance Atlantis and the existing television business of CanWest that is to be contributed to Jointco. This control in fact results primarily from the strategic direction for these regulated businesses that GSCP and its affiliates have imposed upon CanWest under the agreements filed with the Commission in this proceeding. This control in fact (*de facto* control) results regardless of the mechanisms adopted by CanWest and GSCP to demonstrate legal (*de jure*) control of the day-to-day operations of Jointco and its subsidiaries. No amount of tinkering with such mechanisms

will resolve the fundamental problem of the *de facto* control held by GSCP and its affiliates.

4. As also discussed in detail below, the requirement for Canadian ownership and control of broadcasting licensees is a critical policy objective of the *Broadcasting Act*, and is integrally related to various public policies and programs that are designed to promote the creation and distribution of Canadian content. The importance of Canadian ownership and control is affirmed and reinforced by the direction provided to the Commission by the federal Cabinet that prohibits the Commission from licensing an entity that is owned or controlled by non-Canadians (the "Direction")¹.
5. Based on our analysis in this intervention, the proposed transaction does not comply with the control in fact requirements set out in section 3 of the Direction.
6. Foreign ownership and control of the applicant is the primary issue that is addressed in this intervention. CCAU also comments in this intervention on the regulatory process followed with respect to this application, and in particular with the applicant's abuse of such process. A substantial amount of new material relating to the application was made available only two days before the intervention deadline, and CCAU has not had the opportunity to review all of this material in preparing this intervention. CCAU does not understand why the Commission has not given interested parties more time to file interventions regarding the proposal at hand given the importance of this proposal for the entire Canadian broadcasting system.
7. CCAU does not wish to appear at the public hearing. However, individual members of CCAU are filing interventions in this proceeding that indicate their support of this intervention by CCAU and also address such other issues relating to the application as the members consider appropriate. Individual members of CCAU that appear at the public hearing will be prepared at the hearing to elaborate upon this intervention and to respond to any questions that the Commission may have concerning this intervention.

B. Structure Proposed by the Applicant

8. The structure proposed by CanWest and GSCP is relatively complex, and many details of such structure are not provided to interested parties because of extensive claims for confidentiality made by CanWest and GSCP that have been upheld by the Commission.
9. The structure is also a moving target. Notwithstanding that Broadcasting Notice of Public Hearing CRTC 2007-11 was released on July 6, 2007 – at which time one would have assumed the application to be complete – the deficiency process continued and additional filings were made after that date. Furthermore, CanWest issued a news release on July 31, 2007 (copy attached) to announce significant changes in the equity and debt financing of the applicant. Apparently as a result of such news release, the Commission issued a deficiency letter to CanWest on August 1, 2007. The response, which included a copy of the news release, was filed with the Commission on August 7, 2007 and made available to the public via the CRTC web-site on August 8, 2007, only two days before the intervention deadline in this proceeding. In preparing this intervention, CCAU has relied on the public record as it existed prior to August 8, CanWest's news release of July 31, CanWest's response (exclusive of attachments) to

¹ *Direction to the CRTC (Ineligibility of Non-Canadians)*, SOR/97-192, April 8, 1997 *Canada Gazette Part II*, p. 1222.

the Commission's deficiency request of August 1, and the version of the shareholders agreement for Jointco that was filed by CanWest on August 7. We have not had the opportunity to review the other documents recently made available on the public record.

10. CCAU's understanding of the salient features of the original structure proposed by the applicant, and the subsequent revisions, is set out in the following paragraphs.
11. As noted in Broadcasting Notice of Public Hearing CRTC 2007-11, if this application were approved, Jointco would, through a number of wholly-owned subsidiaries, (a) control eighteen specialty television services of Alliance Atlantis, (b) acquire a minority interest in three other services, and (c) acquire a 50% partnership interest in one other service.
12. Approval would also result in CanWest owning 66 2/3% of the voting shares of Jointco. GSCP would own 33 1/3% of the voting shares of Jointco. However, GSCP's economic interest in the Alliance Atlantis licensees would be substantially greater. In the application as originally filed, CanWest would provide only \$200 million of the \$702 million investment in equity to be provided by CanWest and GSCP. As a result, CanWest would have had an equity interest of only 29% in Jointco while GSCP would have had an equity interest of 71%.
13. In its July 31, 2007 news release, CanWest announced that its equity investment in Jointco would increase to \$262 million, thus resulting in CanWest having an equity interest of 36% in Jointco and GSCP having an equity interest of 64%.
14. The ownership of shares in Jointco and the governance of Jointco and its subsidiaries will be subject to a shareholders agreement. Certain features of that agreement are discussed below.
15. The application also contemplates that CanWest will enter into a management and administrative services agreement with Amalco under which CanWest will, among other things, have sole control and influence over programming decisions.
16. A very important feature of the proposed structure is that CanWest and GSCP have agreed that CanWest and its affiliates will contribute CanWest's existing television broadcasting business (the "Contributed Business") to Amalco in 2011 in exchange for an increased equity interest of CanWest in Jointco. The extent to which CanWest's equity interest will increase is dependent upon the combined cash flow of the Contributed Business and the Alliance Atlantis business, the debt of the combined entity, and the target rate of return of GSCP.
17. While the Commission had granted CanWest and GSCP confidentiality for the details of the formula to be used in respect of the calculation of CanWest's ultimate equity interest, CanWest's news release of July 31, 2007 revealed possible outcomes of the contribution. In particular, CanWest noted that if the debt of the combined entity did not increase from current levels (\$788 million), CanWest's equity interest in the combined business could range from 50% to 63% if combined cash flow for the 12 months ending March 31, 2011 was \$200 million to \$300 million. CanWest also noted that its equity percentage would decrease if cash flow was lower than \$200 million or if the debt of the combined entity exceeded \$788 million.

18. GSCP's large equity interest in Alliance Atlantis is compounded by the fact that GSCP has, together with Lehman Brothers and Credit Suisse, agreed to provide to Jointco and its subsidiaries a significant amount of debt financing. With a total allocated purchase price of the Alliance Atlantis regulated businesses that CCAU understands from the applicant's response on August 7, 2007 to a deficiency letter from the Commission to be \$1.572 billion and a total equity contribution by CanWest and GSCP of \$734.5 million, the debt financing that will be required is \$837.8 million. While most of the information relating to debt financing has been granted confidentiality by the Commission, it was apparent that some of the debt financing would have been syndicated to other lenders through an offering of high yield bonds. It now appears from CanWest's news release of July 31, 2007 and from documents filed in this proceeding that the debt financing will now be provided in the form of bridge financing. It is also clear that GSCP will now not syndicate any of the financing to which it or its affiliates were committed.
19. Moreover, the news release of July 31, 2007 states that "[t]he bridge financing replaces the originally contemplated high yield debt offering, which has for the time being been deferred due to recent turmoil in the North American debt markets". Press reports² have noted, and CanWest's deficiency response of August 7, 2007 has confirmed, that the bridge financing will be more expensive for the applicant than a high yield debt offering, which means that the cash flow of the combined businesses, and hence CanWest's ultimate equity, would be lower than would otherwise be the case. This may be the reason why CanWest elected on July 31, 2007 to increase its initial equity investment in Jointco.
20. While it is difficult to confirm given the extensive grant of confidentiality by the Commission to information filed by the applicant, it appears from the publicly available information that GSCP's committed share of the debt financing is 70%. If one combines 70% of \$837.8 million with GSCP's revised equity investment of \$472 million, it is apparent that GSCP's equity and debt investments in Alliance Atlantis' regulated businesses would be \$1.058 billion, or 67.3% of the total purchase price. This gives GSCP an overall economic interest in Alliance Atlantis that is significantly higher than its revised equity interest of 64%.

C. Foreign Ownership Restrictions under the *Broadcasting Act*

21. As a result of the Direction issued to the Commission by the federal Cabinet pursuant to section 26 of the *Broadcasting Act*, the Commission may not issue, amend or renew a broadcasting licence to a person who is not a Canadian. The Direction imposes a number of specific requirements that corporations must meet to qualify as Canadian. These include the jurisdiction of incorporation, the ownership by Canadians of at least two-thirds of the voting shares and of the votes, and the lack of control or influence over programming decisions of the licensee by any corporation that does not meet specified share ownership, officer and board of directors requirements.
22. In addition to these specific requirements in the Direction, section 3 of the Direction provides as follows:

² See e.g. The Globe and Mail, Report on Business, "Finance crunch pinches CanWest", July 31, 2007. (Copy attached.)

Where the Canadian Radio-television and Telecommunications Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control, other than the beneficial ownership and control of the voting shares of a qualified successor by a Canadian carrier or its acquiring corporation, the applicant is deemed to be a non-Canadian.

Section 3 of the Direction is commonly referred to as the "control in fact test".

D. Importance of the Foreign Ownership Restrictions

23. The foreign ownership restrictions imposed by the Direction are an integral and important part of comprehensive federal and provincial public policies to promote the creation, broadcast and distribution of Canadian content.
24. The restrictions are essential to the accomplishment of many of the broadcasting policies set forth in section 3 of the *Broadcasting Act*.
25. Section 3(a) of the Act, being the first of the broadcasting policies, states that “the Canadian broadcasting system shall be *effectively owned and controlled by Canadians*” (emphasis added). CCAU notes that both ownership *and* control by Canadians are identified in this policy. Control without ownership is not sufficient.
26. Other broadcasting policies set forth in the *Broadcasting Act* support the Direction’s requirement that licensed broadcasting undertakings be owned and controlled by Canadians. Section 3(d) of the Act requires the Canadian broadcasting system to, among other things, “safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada” and “encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity”. Section 3(i) of the Act includes requirements that programming provided by the Canadian broadcasting system “be varied and comprehensive”, drawn from a variety of geographic sources, and “provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern”.
27. Pursuant to the *Broadcasting Act*, the Commission reinforces the importance of Canadian content in the Canadian broadcasting system by imposing specific Canadian content requirements on programming undertakings and by imposing Canadian preponderance requirements on distribution undertakings.
28. The *Broadcasting Act* is only one among a number of public and private programs that are designed to ensure the promotion of Canadian content. For example, tax credits, grants, loans, equity investments, tax exemptions, supports of bank guarantees, and miscellaneous funding are available for Canadian productions and Canadian creative personnel from a variety of federal and provincial sources and from industry funds established under the supervision of the Commission. In addition, income tax provisions relating to the deductibility of advertising expenses benefit Canadian broadcasters with a view to promoting Canadian productions,

29. Throughout the history of the regulation of broadcasting in Canada, concerns have been expressed consistently that the objectives enshrined in the *Broadcasting Act* and the complementary objectives of these other measures will not be met without both public broadcasting and Canadian-owned and controlled private broadcasters.
30. Entities such as Alliance Atlantis have benefited from the various measures that promote the creation and distribution of Canadian content. Alliance Atlantis became what it is through the growth of its two earlier companies, Alliance Entertainment Corporation and Atlantis Films Limited. The predecessors to Alliance Atlantis were supported by Canadian public policy and tax dollars through film and television investments, tax credits and distribution assistance. It is in large part as a result of this assistance that Alliance Atlantis became a healthy media company that was ripe as an acquisition target. Canadian taxpayers helped to create the Alliance Atlantis assets and non-Canadians (i.e. GSCP and its affiliates) now seek to acquire the overwhelming majority (64%) of the future profits flowing from such assets. It is partly as a consequence of the receipt of such benefits by Alliance Atlantis that it is incumbent that the Commission ensure that Alliance Atlantis remains Canadian-owned and controlled.
31. As representatives of the Canadians who create the content that is exhibited on the Canadian broadcasting system, CCAU is committed to ensuring the integrity of the system. Canadian ownership and control of broadcasting undertakings is a critically important issue, and strict adherence to the requirements of the Direction is essential.
32. CCAU notes that the Executive Chairman of Alliance Atlantis, Michael MacMillan, shares this view. When Mr. MacMillan appeared before the Standing Committee on Canadian Heritage of the House of Commons in December 2002 in its review of the state of the Canadian broadcasting system, he stated that ownership of broadcasting undertakings

has an importance well beyond most commodities. It's not a commodity, it's a cultural influence, and that's why we are here to talk about it and not about cups and saucers and pens and pencils. *Ownership has a great deal of influence, I believe, over what is produced and why.* (Emphasis added)

E. Compliance with the Direction

33. CanWest has described in the application how it proposes to satisfy the specific requirements in the Direction relating to jurisdiction of incorporation, the ownership by Canadians of at least two-thirds of the voting shares and of the votes, and the lack of control or influence over programming decisions of the licensee by any corporation that does not meet specified share ownership, officer and board of directors requirements. However, satisfaction of those requirements is not sufficient. The Commission must also be satisfied, as required by section 3 of the Direction, that Jointco and its subsidiaries will not, "on the basis of personal, financial, contractual or business relations *or any other considerations relevant to determining control*" be controlled by a non-Canadian (emphasis added).
34. CCAU submits that the structure proposed by CanWest and GSCP, even with the amendments to the structure announced on July 31, 2007, will not comply with the control in fact requirements that apply pursuant to section 3 of the Direction. The balance of this intervention explains the basis for this submission.

35. It should be noted that CCAU's ability to assist the Commission with an analysis of the control in fact issue has been severely constrained by the broad scope of information filed by the applicant for which the Commission has granted confidentiality. This includes some such information (e.g. relating to debt financing) which was to be filed with the Commission only days before the deadline for this intervention, and which the applicant has recently stated will now be filed after the intervention deadline (as a result of the substitution of the bridge financing for the high yield debt offering and a delay in the closing date of the acquisition of Alliance Atlantis shares). While CCAU recognizes that confidentiality may be appropriate in exceptional cases³, we note that a significant number of documents or portions thereof have been, or were until two days before the intervention deadline, withheld from the public record in this case. It would have been very useful for interested parties, such as CCAU, to review a more fulsome public record in analyzing the application in the preparation of this intervention. Consequently, there is a significant burden upon the Commission to analyze the confidential information and to assess its impact on the concerns expressed by CCAU and other intervenors who have prepared their interventions based solely on a review of the public record. In order to approve this application, the Commission must be assured, based on a review of both the public and confidential information, that Jointco and its subsidiaries are not controlled in fact by non-Canadians.

(i) Application of the Control in Fact Test

36. The application of the control in fact test requires the consideration of a number of factors. These include the composition of the board of directors, provisions in the shareholders agreement relating to control and the issuance and transfer of shares, and the sources and conditions of financing. CCAU observes that control in fact is invariably assessed by the Commission and other federal regulatory agencies on a case-by-case basis.
37. CCAU submits that a useful statement of a general principle that can guide the case-by-case assessment of control in fact has been provided by the National Transportation Agency, the predecessor of the Canadian Transportation Agency. The Canadian Transportation Agency is required to assess Canadian control in fact of certain air carriers under the *Canada Transportation Act* and predecessor legislation. The Agency noted as follows in a 1993 decision relating to a proposed acquisition of an interest in Canadian Airlines by an affiliate of American Airlines:

In reviewing the Canadian ownership status of an air carrier, the Agency considers various factors in making a control in fact determination. There is no one standard definition of control in fact but generally, it can be viewed as the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise. It also can be viewed as the ability to manage and run the day-to-day operations of an enterprise. Minority shareholders and their designated directors normally have the ability to influence

³ CCAU does wish to observe, however, that the arguments that were made by CanWest and counsel to GSCP in support of the confidentiality claims that rely on a *Telecommunications Act* precedent, where competitors of a carrier (which can be distinguished from members of the public with an interest in the achievement of *Broadcasting Act* policy objectives) were denied access to information, and on *Radiocommunication Act* precedents, in which ownership and control proceedings are completely *in camera*, do not appear appropriate for proceedings that are subject to a public hearing under the *Broadcasting Act*.

a company as do others such as bankers and employees. The influence, which can be exercised either positively or negatively by way of veto rights, needs to be dominant or determining, however, for it to translate into control in fact.⁴

This statement was cited with approval by the Commission in its decision under the *Telecommunications Act* relating to the ownership and control of Unitel.

38. There are a number of features of the structure proposed by CanWest and GSCP that lead CCAU to believe that control in fact of the Alliance Atlantis broadcasting licensees, and ultimately of the broadcasting undertakings to be contributed by CanWest to Amalco, will reside with non-Canadians. Each of these features is reviewed below.

(ii) Contribution of CanWest's Existing Television Business

39. Article 5 of the shareholders agreement outlines the provisions relating to the contribution by CanWest of the Contributed Business; i.e., CanWest's existing television business. As noted above, many of the provisions relating to this contribution have been subject to claims of confidentiality that have been upheld by the Commission. It is known publicly that CanWest is required to "maximize the economic value of the Business (including the Contributed Business)" and is constrained with respect to the disposition or acquisition of businesses or assets. CanWest is also constrained with respect to the Contributed Business entering into transactions with CanWest or its affiliates.
40. As noted in the news release issued by CanWest on July 31, 2007, the minority shareholder protections that have been afforded to GSCP under the shareholders agreement in relation to the Alliance Atlantis regulated businesses will also apply "in respect of the operation of [CanWest's] Canadian television business". These constraints and restrictions will therefore also apply to the Contributed Business (which means that both the Alliance Atlantis regulated undertakings and CanWest's existing regulated undertakings will be affected) even though the Contributed Business will be under the sole control of CanWest until contributed to Amalco. In light of this, GSCP will secure control in fact of the Contributed Business. The control in fact of the Contributed Business exacerbates the control in fact that GSCP will exercise over the Alliance Atlantis regulated businesses if the proposed transaction is approved.

(iii) Share Transfers

41. All of the provisions of the shareholders agreement relating to a call by CanWest on the shares of GSCP and to a put by GSCP of its shares to CanWest were subject to a claim of confidentiality that was upheld by the Commission.
42. Similarly, the applicant requested and was granted confidentiality for a "right of first offer" provision in the shareholders agreement. CanWest had explained that this provision gives GSCP liquidity "in the last resort" by allowing GSCP to offer to sell its interest to CanWest at a specified price and on specified terms. If CanWest did not elect or was

⁴ Decision No. 297-A-1993, May 27, 1993, In the Matter of the review by the National Transportation Agency of the proposed acquisition of an interest in Canadian Airlines International Ltd. by Aurora Investments, Inc., a wholly-owned subsidiary of AMR Corporation, at pages 20 and 21.

not able to purchase GSCP's shares under the right of first offer, CanWest would be required to sell its shares to a third party to which GSCP would also sell its shares.

43. The material that was made available on the CRTC's web-site on August 8, 2007, as part of the applicant's response to the deficiency request of August 1, 2007, includes a shareholders agreement which no longer abridges, except to a very limited extent, the provisions relating to the call, put and right of first offer provisions.
44. *The right of first offer would allow a non-Canadian minority voting shareholder (GSCP) to force a sale of the shares of Jointco if CanWest, the majority voting shareholder of Jointco, did not have sufficient funds to purchase GSCP's shares or elected not to do so.* We note that the Commission has expressed its concern previously with situations in which a non-Canadian shareholder can influence the disposition of shares of a licensee or of an entity controlling a licensee. For example, in Decision CRTC 2000-86, the Commission disallowed a provision in a shareholders agreement that essentially gave ESPN, the sole minority foreign shareholder in the entity that operated TSN and other services, the right to choose who would be the majority Canadian shareholder on a sale of shares.
45. CCAU believes that the right of first offer in the shareholders agreement for Jointco is further evidence of control in fact by GSCP.

(iv) Economic Interest

46. In its decision relating to Canadian Airlines discussed above, the National Transportation Agency explained the significance of a high economic interest of non-Canadians as follows:

The Agency finds that as the economic interest of a shareholder, as reflected in the ownership of voting and non-voting shares, increases above 25 per cent, such shareholdings become of increased importance in determining where control in fact lies. The greater the economic interest, the greater the likelihood that the owner of that economic interest will be able to exercise control in fact. This matter becomes of major importance as the economic interest reaches and exceeds 50 per cent.⁵
47. GSCP's original economic interest in the equity of Jointco and hence in the Alliance Atlantis licensees of 71% was extremely high. The equity interest of 64% following the revisions to the structure announced in CanWest's news release of July 31, 2007 remains extremely high, and is well in excess of the 50% level at which the National Transportation Agency considered the matter to become of "major importance". Because of GSCP's commitment to provide debt financing as discussed above, its overall economic interest in Jointco and its subsidiaries exceeds 67%.
48. The highest equity interest of a non-Canadian that we believe the Commission has approved previously under the *Broadcasting Act* is the 65% interest held by HMTF General Partnership in Persona Communications Inc. (Broadcasting Decision CRTC 2004-284). The Commission conditioned such approval on a number of corporate governance measures that were designed to reduce or eliminate the possibility of the

⁵ At page 22.

non-Canadian exercising control in fact. In addition, in the Persona case, there were also other large financial shareholders with resources and expertise that could balance the high economic interest of the non-Canadian financial investor.

49. CCAU is not aware of approvals under the *Telecommunications Act* or the *Radiocommunication Act* of a foreign equity interest as high as that originally proposed in this application. In the realm of radiocommunication, we are aware from media reports that Industry Canada is currently considering, but has not yet approved, an application for approval of a transfer of control of Telesat Canada which would result in a non-Canadian – Loral – holding 64% of the equity of Telesat, the same percentage that GSCP would hold under the revised structure announced on July 31, 2007. In recent months, there has been considerable press coverage and public concern relating to the proposed acquisition of BCE by consortia that include non-Canadians. However, media reports suggest that the economic interests of non-Canadians in the proposed acquisition of BCE by the consortium organized by Ontario Teachers Pension Plan will not exceed 41%.
50. In this case, the high equity interest of GSCP is compounded by GSCP's commitment, as CCAU understands it from the limited information available on the public record, to provide 70% of the substantial debt financing required for the acquisition by Jointco and its subsidiaries of the Alliance Atlantis regulated businesses. CCAU is not surprised that a significant portion of the purchase price will be obtained via debt since this is a customary feature of private equity acquisitions. However, it is unusual for a major portion of the debt financing to be provided by the same non-Canadian entity that holds a majority of the equity. For example, in the Persona case referred to above, debt financing in the amount of \$270 million exceeded the amount of equity financing (\$155 million), but the debt financing was provided by TD Bank and not by the non-Canadian shareholder that held a majority of the equity.
51. The rationale for associating a high economic interest of a non-Canadian with potential control in fact is that the non-Canadian bears most of the risk and reward of the business and therefore has a clear interest in the destiny of the business. A Canadian with voting control but only a minority economic interest has a lesser interest in such destiny.
52. A high economic interest that results from the provision of a majority of the equity and debt also highlights the dependence of the regulated undertakings on the person with such interest, even if such person does not exercise a majority of the voting interests. In Decision CRTC 97-86, the Commission noted the large amount of financing being provided by a 20% voting shareholder and observed that "under certain circumstances, a minority shareholder could be perceived as wielding considerable amount of leverage, or even control, over a broadcasting undertaking, with the result being an unacceptable level of dependence".
53. The relative size of the economic interest of a non-Canadian in a regulated entity is also an indication of ownership. For example, in this case, we know that GSCP will receive 64% of the profits of the Alliance Atlantis businesses while CanWest will receive only 36%. Following the contribution of CanWest's existing broadcasting business to Amalco, CanWest's share of the profits of the combined businesses may increase, but we do not now know for certain that the share will increase or, if so, by how much. CCAU reminds the Commission that section 3(a) of the *Broadcasting Act* requires that the Canadian broadcasting system must be effectively *owned* and *controlled* by

Canadians. When almost two-thirds of the risk and reward of operating a Canadian broadcasting licensee resides with non-Canadians, how can one say that the undertaking is effectively *owned* by Canadians?

(v) CCAU's Findings with respect to Control in Fact

54. Based on the information available to it from the public record, CCAU is not arguing that GSCP will have, to quote the National Transportation Agency, “the ability to manage and run the day-to-day operations” of the Alliance Atlantis licensed broadcasting undertakings or the CanWest existing television undertakings that are to be contributed to Amalco. However, CCAU is arguing that the structure devised by CanWest and GSCP, which was undoubtedly influenced significantly by GSCP as the predominant source of funds for the acquisition of Alliance Atlantis, clearly “determine[s] or decide[s] the strategic decision-making activities” of such undertakings, which is the second test of control in fact identified by the National Transportation Agency.
55. Based on our analysis of the public record, (a) the provision by GSCP of the majority of the equity and debt financing, (b) the put and right of first offer provisions, and (c) the fact that CanWest’s ultimate ownership of the equity of Jointco will apparently be determined by cash flow achievements of both Jointco and the television business of CanWest that is to be contributed to Jointco; *appear to give GSCP enormous control over the strategic direction of the regulated businesses of both Alliance Atlantis and CanWest. That control results from the very existence of the agreements between CanWest and GSCP that have been filed in this proceeding.* It does not depend on actions to be taken by GSCP in the future.
56. If this application were approved, everything that CanWest would do in managing and running the day-to-day operations of Alliance Atlantis and CanWest Global would be dictated by the overriding strategic consideration that CanWest will not be the majority owner of Alliance Atlantis or of CanWest’s existing broadcasting business unless it succeeds in maximizing cash flow, minimizing debt and achieving GSCP’s target rate of return. These objectives may not be the same ones that CanWest would set for itself, or that the Commission would wish to see CanWest pursue, as a Canadian with true ownership and control of its broadcasting undertakings.
57. The control in fact of GSCP in the case at hand is overwhelming. Unless the Commission denies this application, the strategic direction of both Alliance Atlantis and CanWest Global for the future will be set by a non-Canadian shareholder and financier. This would be completely contrary to long-standing Canadian public policy and to the legal requirements of the Direction. The foreign ownership rules are critical to the integrity of the Canadian broadcasting system and must be upheld. No exception can or should be made.
58. There has been a disturbing trend recently to allow more non-Canadian influence over Canadian cultural matters – such as the proposal to reduced the CTF guidelines to allow 8 point productions to receive public funding – and it is incumbent upon the Commission to recognize and enforce the limits on non-Canadian ownership and control of Canadian broadcasting undertakings.
59. CCAU is also very concerned that the strategic direction imposed upon CanWest by GSCP could lead to the demise of CanWest, one of the few remaining conventional

participants in the increasingly consolidated Canadian broadcasting industry. If this application were approved and if everything went well for CanWest, the adverse implications of the strategic direction might not prove to be apparent. But, if everything did not go well, (a) CanWest could be forced to divest of all or a portion of its broadcasting businesses under the right of first offer, (b) GSCP could seek to achieve liquidity by vending its interest or a significant portion thereof to a non-Canadian strategic investor (like a U.S. broadcaster) whose motivation for such an investment would be more than financial and thus much more likely to raise day-to-day operational control in fact concerns, or (c) CanWest could have no choice but to sell its broadcasting businesses to meet the financial requirements of GSCP and the debt financiers.

60. In expressing this concern, CCAU is mindful of the fact that business media have speculated that the disappearance of Craig Media as a broadcaster with the sale of its shares to CHUM was the direct result of the private equity investment by Providence in Craig Media. CCAU is gravely concerned, as are others, that the private equity investment by GSCP in Alliance Atlantis may lead to the same unfortunate result.⁶
61. The prospect that GSCP's investment in Alliance Atlantis with CanWest could lead in the future to a diminished or no role for CanWest in the Canadian broadcasting system highlights the control in fact that would be exercised by GSCP and its affiliates in establishing the strategic direction for both Alliance Atlantis and CanWest's existing television business if this application were approved.

F. Regulatory Process

62. CCAU's primary focus in this intervention is on the substantive issue of the non-Canadian ownership and control of the applicant and the consequent adverse implications for the Canadian broadcasting system. CCAU is also concerned, however, with the regulatory process relating to this application.
63. There are three aspects of the regulatory process that CCAU finds troubling: the incompleteness of the application prior to gazetting, the extensive claims for confidentiality which were apparently easily abandoned in non-regulatory arenas, and the substantial amendments to the application that were made by news release on July 31, 2007 and that did not form part of the public record of this application until two days before the intervention deadline.
64. In the normal course, a notice of public hearing is not issued in respect of an application until the Commission has determined that the application is complete. The Commission has very recently described in Broadcasting Circular CRTC 2007-4 the second step that it applies in all application review processes as follows:

Initial review and completeness: Analysts determine if the applicant has filed all the required information, or if clarifications are required. Where clarifications are required, staff requests the information, and the application may be set aside until the applicant provides the requested information. Where an application is deemed incomplete, it is returned to the applicant with guidance concerning the information required.

⁶ See e.g. Zena Olijnyk, "Note to Leonard: swim fast" in *Canadian Business*, January 15, 2007. (Copy attached.)

65. The application by CanWest and GSCP was clearly not complete when Broadcasting Notice of Public Hearing CRTC 2007-11 was issued on July 6, 2007. Deficiency questions were posed to the applicant by Commission staff or their advisors after July 6, 2007, and additional information was filed by the applicant subsequent to that date. CCAU does not understand why gazetting of the application departed from the usual procedures and did not await receipt of all necessary information (such as the structure of the applicant's debt financing) in final form.
66. CanWest and GSCP made extensive claims for confidentiality in respect of the application, and the Commission granted confidentiality in respect of most of that information. As noted above, the extensive scope of confidential information limits the ability of interested parties such as CCAU to assist the Commission in assessing the merits of the application.
67. CCAU reiterates that, in some exceptional instances, the granting of confidentiality may be appropriate. CCAU is very concerned, however, that CanWest and GSCP appear to have no concern about releasing information subsequently to the investing public that they considered to be extremely confidential in the Commission's regulatory arena. Most of the information that is now available to interested parties concerning such matters as CanWest's equity participation as a result of the contribution to Amalco of its existing television business, the put and call rights, and the right of first offer was provided in CanWest's news release of July 31, 2007 and only subsequently in the public record of this proceeding, two days before the intervention deadline. Because information was disclosed in the news release that the applicant had claimed previously before the Commission was confidential and competitively sensitive, the applicant apparently no longer felt the need to withhold such information from interveners and made it available with its deficiency response of August 7, 2007. In CCAU's submission, this is an abuse of the Commission's regulatory process.
68. Finally, CCAU was surprised to hear on July 31, 2007, from the issuance by CanWest of a news release on that date, that substantial amendments had been made to the structure proposed by CanWest and GSCP to the application filed with the Commission. CCAU was also surprised that no amendments to the application to reflect the revised structure described in the news release had been placed on the public record of this proceeding. Indeed such amendments were only added to the public record on August 8, 2007 – two days before the intervention deadline – as a result of CanWest's response to a deficiency letter from the Commission dated August 1, 2007.
69. CCAU was also surprised that the Commission did not elect to extend the intervention deadline in such circumstances. CCAU does not understand why the Commission has not provided more time to interested parties to review the additional materials that were placed on the public record but two days before the filing deadline. Given the critical importance of this proposal and its importance for the entire Canadian broadcasting system, more time to comment would have been appropriate.
70. While the revisions to the structure announced by CanWest may reflect a desperate, and we would argue futile, attempt to overcome obvious deficiencies in the original application and the increasingly perilous prospects of CanWest in this transaction, the manner and the timing in which they were made constitute a clear abuse of the Commission's regulatory process. Interested parties such as CCAU have been forced as a result of such announcement on July 31, 2007 and the addition of a substantial

amount of new material to the Commission's web-site on August 8, 2007 to apply significant additional resources to the analysis of the application and to the preparation of interventions. The substantial amendments to the application that were announced by CanWest in its news release on July 31, 2007 and published on the Commission's web-site on August 8, 2007 are, in CCAU's submission, reason enough for the Commission to return the application to CanWest and GSCP to be re-filed when it is complete and in final form.

71. CCAU reserves its legal rights relating to procedural fairness as a result of the flawed regulatory process in this proceeding.

G. Conclusion

72. For all of these reasons, CCAU submits that the public record of this proceeding demonstrates strong grounds for a determination by the Commission that GSCP would have control in fact of the Alliance Atlantis broadcasting businesses, and of the existing CanWest Canadian television business, if this application were approved. Since the *Broadcasting Act* requires that licensed broadcasting undertakings must be effectively owned and controlled by Canadians, and since control in fact by non-Canadians of licensed broadcasting businesses is prohibited by the Direction, it follows that the application must be denied.
73. CCAU acknowledges that the Commission has access to more information concerning the arrangements between GSCP and CanWest than has been made available to the public. It appears that the Commission's exposure to confidential information may increase at the public hearing given the Commission's extraordinary intention, as stated in Broadcasting Notice of Public Hearing CRTC 2007-11, to possibly review certain matters with the applicant at the hearing on an *in camera* basis. The extensive amount of confidential information increases the burden on the Commission to make a decision pursuant to section 3 of the Direction without as much assistance from interested parties as would otherwise be provided.
74. If the Commission does not agree with CCAU's submissions with respect to control in fact and if the Commission concludes that the applicant in this proceeding is not controlled by a non-Canadian, CCAU respectfully requests that the Commission provide a fully reasoned analysis in its decision for coming to this conclusion. Since the GSCP-CanWest structure would likely in that event become a blueprint for future investments by non-Canadians, members of the Canadian broadcasting industry and the Canadian public generally will require a complete understanding from the Commission of why the structure proposed by CanWest and GSCP satisfies our Canadian ownership and control laws and policies.
75. We reiterate the concerns noted above with respect to the regulatory process followed in this application. In our submission, the Commission would clearly be justified in returning the application to CanWest and GSCP to be re-filed when it is complete and in final form.
76. We thank the Commission for the opportunity to make our views known. As noted above, CCAU does not wish to appear at the public hearing. However, the individual members of CCAU that attend the hearing to present their individual interventions look

forward to elaborating upon the foregoing and responding to any questions that the Commission may have at the public hearing scheduled for September 5, 2007.

77. We are attaching a copy of our e-mail and fax cover sheet confirming that a true copy of this intervention has been sent to the applicant by both e-mail and fax.

All of which is respectfully submitted.

Yours truly,

COALITION OF CANADIAN AUDIO-VISUAL UNIONS,



Steven Waddell
National Executive Director
Alliance of Canadian Cinema, Television
and Radio Artists (ACTRA)



Peter Murdoch
National Vice President
Communications, Energy and Paperworkers
Union of Canada (CEP)



Alan Goluboff
President
Directors Guild of Canada



David Hardy
Business Agent
National Association of Broadcast
Employees & Technicians (NABET)



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For immediate release

CanWest Provides Update on Acquisition of Alliance Atlantis

TORONTO (July 31, 2007) - CanWest Global Communications Corp. ("CanWest") today released additional information regarding the previously announced Plan of Arrangement (the "Arrangement") pursuant to which AA Acquisition Corp., a subsidiary of CanWest, will acquire all of the outstanding shares of Alliance Atlantis Communications Inc. ("Alliance Atlantis") for \$53.00 cash per share.

On July 30, 2007, CanWest, Goldman Sachs Capital Partners ("Goldman Sachs") and Alliance Atlantis announced that the closing date of the Arrangement had been extended from August 7, 2007 to August 15, 2007. The extension was necessary in order for an affiliate of AA Acquisition Corp. to finalize commitments from its banking syndicate for a bridge facility to finance part of the consideration for the Arrangement, and for the parties to complete the definitive documentation for this transaction. The bridge financing replaces the originally contemplated high yield debt offering, which has for the time being been deferred due to recent turmoil in the North American debt markets.

Coincident with obtaining the bridge financing commitment, CanWest and Goldman Sachs have settled the key economic terms of their joint venture, including their respective contributions of equity to the company that will acquire Alliance Atlantis' broadcasting assets.

Concurrently with the completion of the Arrangement, Alliance Atlantis' broadcasting, entertainment and motion picture distribution businesses will be reorganized and split into separate groups that will each be operated on a stand-alone basis, with certain other assets of Alliance Atlantis to be held separately.

The broadcasting assets will be held in various subsidiary entities of CW Investments Co. ("CW Investments") in which CanWest will indirectly hold two-thirds of the voting shares and an approximate 36% equity interest, and Goldman Sachs will indirectly hold one-third of the voting shares and an approximate 64% equity interest. CanWest will have no continuing interest in Alliance Atlantis' entertainment and motion picture distribution businesses.

The portion of the purchase price to be allocated to Alliance Atlantis' broadcasting business will be approximately \$1.5 billion, inclusive of certain transaction costs. The purchase price will be financed through a combination of debt and equity as follows:

- CanWest will make a \$262 million equity investment in CW Investments, an increase from its previously announced commitment of \$200 million, with Goldman Sachs providing \$472 million.
- CW Media Holdings Inc. (“CW Media Holdings”), a subsidiary of CW Investments, intends to put in place new senior secured credit facilities totaling \$525 million, consisting of a \$475 million term loan and a \$50 million revolving credit facility (which is expected to remain undrawn at closing) and approximately \$313 million of bridge loans, for a total opening debt of \$788 million.
- CW Media Holdings’ debt financings will be independent of CanWest and Goldman Sachs, with recourse only to CW Investments and its subsidiaries. The debt financings will be subject to customary closing conditions, including completion of the Arrangement.

While the CRTC considers whether to grant approval of the change of ownership and transfer of control of certain of Alliance Atlantis’ specialty television channels, the shares and partnership interests of CW Investments’ subsidiaries that hold the broadcasting licenses and certain other broadcasting assets and employees will be placed into a trust under the direction of an independent trustee. Should CRTC approval be granted, these shares and partnership interests will be released from the trust and delivered to a subsidiary of CW Investments. CW Investments’ specialty channels and CanWest’s Canadian television business will then be managed by CanWest on an integrated basis under the terms of a management and administrative services agreement.

In connection with the Arrangement, certain affiliates of CanWest and Goldman Sachs will enter into a shareholders agreement with respect to their ownership of CW Investments. Under the terms of the shareholders agreement:

- CanWest will agree to merge its Canadian television business with the CW Investments group in 2011, subject to any necessary regulatory approvals. The contribution of CanWest’s television business to the merged entity will be made on a debt-free and tax-efficient basis, excluding any tax liabilities related to the period prior to the combination date. The merger is expected to be completed during the second or third calendar quarter of 2011.
- CanWest’s equity interest in CW Investments following the merger will be based upon the EBITDA of the combined business (the “Combined EBITDA”) for the 12 months ending March 31, 2011 (not December 31, 2010, as previously disclosed) and the consolidated net indebtedness of the CW Investments group at that time, as well as the rate of return on Goldman Sachs’ equity investment, which will vary depending on the Combined EBITDA at that time.
 - Assuming that the consolidated net indebtedness of the CW Investments group at March 31, 2011 is the same amount as will be outstanding at closing (\$788 million), CanWest's equity interest will be approximately

50% if Combined EBITDA for the 12 months ending March 31, 2011 is \$200 million, approximately 58% if Combined EBITDA is \$250 million and approximately 63% if Combined EBITDA is \$300 million. If the Combined EBITDA is higher and/or the consolidated net indebtedness of the CW Investments group is lower, then CanWest's equity interest will increase from these levels; conversely if Combined EBITDA is lower and/or consolidated net indebtedness of the CW Investments group is higher, then CanWest's equity percentage will decrease.

- In order to complete the merger, CanWest will be required to remove any impediments relating to its then existing indebtedness that would prevent the completion of the merger.
- CanWest and Goldman Sachs have also agreed to certain put rights and call rights with respect to Goldman Sachs' equity interests in CW Investments.
 - In each of 2011, 2012 and 2013 CanWest will have the right to cause CW Investments to purchase (or may choose to purchase itself) up to 100% of Goldman Sachs' equity interest in CW Investments, subject to CW Investments (where it is the purchaser) maintaining a maximum consolidated leverage of 6.5 times the Combined EBITDA where less than 100% of Goldman Sachs' equity interest is purchased.
 - In the event that CanWest does not exercise its call right with respect to at least 50% of Goldman Sachs' equity interest in 2011, Goldman Sachs will then have the right to require CW Investments to acquire equity interests which, together with any equity interests purchased pursuant to CanWest's call in 2011, would equal up to 50% of Goldman Sachs' total equity interest in CW Investments, subject to CW Investments maintaining a maximum consolidated leverage of 6.5 times Combined EBITDA. Goldman Sachs will also have the right to require CW Investments to purchase any remaining equity interests that it holds in 2013.
 - The price at which Goldman Sachs' equity interest could be purchased will be based upon the agreed equity value of CW Investments on the relevant date, being equal to 12 times the Combined EBITDA for the 12 month period ended March 31 of the year in which the call or put is exercised, less the consolidated net indebtedness of the CW Investments group at that time. The call and put rights may be exercised in the second quarter of each of the years specified above with settlement occurring in the same calendar quarter, with the exception of the settlement of the first call or put in 2011, which would occur in the third calendar quarter.
 - The parties have also agreed to certain minimum amounts of Combined EBITDA for purposes of calculating the purchase price for Goldman Sachs' equity interest upon the exercise of CanWest's call rights. Regardless of actual results, the relevant Combined EBITDA will be

deemed to be no lower than \$230 million, \$250 million and \$280 million if CanWest's call rights are exercised in 2011, 2012 or 2013, respectively. No such minimum amounts will apply for purposes of determining the purchase price applicable on an exercise of Goldman Sachs' put rights, provided that if Goldman Sachs' exercises its put right in 2011, the purchase price will be based upon an agreed equity value of no less than \$2.5 billion less the consolidated net indebtedness of the CW Investments group as at March 31, 2011.

- If CanWest or CW Investments has not acquired 100% of Goldman Sachs' equity interest by the expiry date of Goldman Sachs' last put right in 2013, then Goldman Sachs will be entitled to sell the CW Investments group, subject to a right of first offer in favour of CanWest, failing which Goldman Sachs will have the right to require CW Investments to effect an initial public offering of securities of the CW Investments group as a means of effecting its exit, subject to any necessary regulatory approvals.
- If necessary to ensure that CW Media Holdings complies with certain financial covenants under its senior secured facilities, CanWest will be obliged to make additional equity contributions to CW Investments up to a maximum of \$12.5 million in 2008 and \$25 million in each of the years thereafter until the combination date.
- The shareholders agreement will also contain typical minority shareholder protections for the benefit of Goldman Sachs, including restrictions on the incurrence of additional debt by CW Investments and its subsidiaries and other transactions outside the ordinary course of business, in each case without the unanimous approval of the board of directors of CW Investments. CanWest will agree to similar restrictions in respect of the operation of its Canadian television business. There will be no restrictions on CanWest's ability to determine the programming content of either of the businesses and CanWest will maintain full control of all day-to-day operations of both businesses on an integrated basis under the terms of the management and administrative services agreement.

Forward-Looking Statements

This media release contains certain comments or "forward-looking statements" that are based largely upon current expectations and are subject to certain risks, trends and uncertainties. Statements that are not historical facts are forward-looking and are subject to important risks, uncertainties and assumptions. The reader should not place undue reliance upon such forward-looking statements. They involve known and unknown risks, uncertainties and other factors that may cause them to differ materially from anticipated future results or expectations expressed or implied by such forward-looking statements, including the risk that the Arrangement will not be successfully completed for any reason (including the failure to obtain the required financing). Certain uncertainties and other factors are described in materials filed by CanWest with the security regulatory authorities in Canada from time to time and are available at www.sedar.com.

CanWest disclaims any intention or obligation to update any forward-looking statement even if new information becomes available as a result of future events or for any other reason.

About CanWest Global Communications Corp.

CanWest Global Communications Corp. (www.canwestglobal.com) an international media company listed on the TSX (trading symbols: CGS and CGS.A) is Canada's largest publisher of English language daily newspapers, and owns, operates and/or holds substantial interests in free-to-air and subscription-based television networks, out-of-home advertising, web sites, and radio stations and networks in Canada, New Zealand, Australia, Singapore, Indonesia, Turkey, the United States and the United Kingdom.

The Company will hold a conference call on Tuesday, July 31, 2007 at 2:00 PM Eastern Daylight Time. The call-in numbers are 416-644-3420 or 866-249-2165. Audio Stream and PowerPoint Presentation will also be available at <http://www.canwestglobal.com/>. This call is for analysts only. Media may participate in listen-only mode. Replay will be available for five days following the call at 416-640-1917 or 877-289-8525 using the pass-code 21242698#.

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Finance crunch pinches CanWest

BY GRANT ROBERTSON

CanWest Global Communications Corp. became the latest victim of concerns over high-yield debt yesterday when it was forced to abandon its original financing plans for the takeover of Alliance Atlantis Communications Inc.

Canada's biggest media company and buyout partner Goldman Sachs Group Inc. will now finance their bid for Alliance through bank bridge financing, instead of through a high-yield bond offering to investors.

CanWest joins dozens of companies that have altered their borrowing strategies in recent weeks amid the evaporating corporate debt market, which has held up numerous deals from leveraged takeovers to simple debt refinancing and share buybacks.

Much like CanWest's plan to finance some of the Alliance buyout with Goldman through the sale of high-interest notes, most of those deals would have been easy to execute a only a few months ago, before the debt crunch hit.

But companies have seen the corporate debt market dissipate in a hurry.

High-risk debt, seen by hedge funds and mutual funds as an attractive bet given the higher returns, has dropped out of fashion.

Companies are now scrambling for alternate arrangements, or delaying deals altogether.

» SEE 'CANWEST' PAGE B2

Companies scramble as debt market dwindles

» "Going straight to market with a high-yield offering worked probably six weeks ago, but given current market conditions, a lot of these companies are finding it a lot more difficult," said Jamie Wetmore, an analyst with Dominion Bond Rating Service Ltd.

"It's a reflection of the general market conditions, and the choppiness of the debt markets - particularly in the high-yield market. Most of these companies are going to have to rethink their financing arrangements."

CanWest planned to close the Alliance deal early next week, but has pushed it back to Aug. 15 and has lined up a syndicate of banks to provide bridge financing.

Quebecor Inc., which is looking to buy Canadian community newspaper publisher Osprey Media Income Fund, made a similar move recently when it was also forced to scrap a planned \$750-million (U.S.) bond sale.

Luc Lavoie, a spokesman for the Montreal-based company, said it has turned to the banks for bridge financing instead. The Quebecor move was significant because it signalled that even companies with solid credit footing were running into problems borrowing money at cheap rates.

That comes after an extended period where financing was easy to come by, even when higher risks were being placed on the shoulders of lenders.

The list of affected companies includes names like Cadbury Schweppes PLC, which has been forced to extend the deadline on the sale of its U.S. soft drink division amid concerns potential buyers are having difficulty arranging financing at favourable rates.

Share buybacks and debt refinancing are also being hit. British football franchise Manchester United Plc and Internet travel agent Expedia Inc. have both run into problems in recent weeks trying to execute such strategies.

Low-risk financing brings smaller returns, but those in-

Recent bond, share sales delayed



CADBURY SCHWEPES PLC

The world's biggest confectionery group delayed the sale of its U.S. drinks business.

DANA GAS

Dana Gas PJSC The United Arab Emirates-based firm postponed pricing its \$1-billion (U.S.) convertible Islamic bond until September.

GAZPROM

The world's largest gas company decided not to price its 30-year benchmark dollar Eurobond. On July 25, volatile market conditions led the Russian company to scrap plans to issue a 10-year Eurobond along with the 30-year bond.

ALLIANCE BOOTS

The British health and beauty chain postponed syndication of the £5.05-billion (\$10.35-billion U.S.) of senior debt backing its leveraged buyout, Europe's largest ever, a source said.

CHRYSLER

Chrysler Corp. postponed a \$12-billion auto loan deal, while

Chrysler Financial Services sweetened the pricing on \$6-billion of loans for the second time, market sources said.

QUEBECOR MEDIA

The unit of Quebecor Inc. pulled a \$750-million junk bond sale, high-yield research firm KDP Investment Advisors said. *|| Reuters News Agency*

vestors get paid first in the event of a foreclosure. Worries about defaulting on the wave of higher-risk lending that has taken place in the past year, particularly in the U.S. housing market, are growing.

Even as U.S. regulators try to calm investors' concerns about the risks involved have almost stopped such lending in its tracks in recent weeks.

Other deals that could be affected include the buyout of Canadian telecom giant BCE Inc. A consortium made up of Toronto-Dominion Bank, Citigroup Inc. Deutsche Bank

A.C. and Royal Bank of Scotland was looking to sell \$12.4-billion (Canadian) of high-yield debt in the BCE deal. In about three months, the banks will be looking to syndicate the debt to other investors to complete the deal.

The financing CanWest and Goldman Sachs are seeking covers a portion of the \$1.4-billion needed to buy Alliance's 13 specialty television channels. It has not been disclosed how much of that will be borrowed, but the bridge financing will add costs to the deal since the terms will be less fa-

vourable. CanWest spokeswoman Deb Hutton said the difference wasn't "materially different" to the total buyout price, and details of the financing will be made public by Aug. 15.

The company has assurances from the banks that the financing will be provided, Ms. Hutton said. "We've provided that written commitment to Alliance Atlantis" that the money is coming, she added.

Amid the softness, CanWest was recently forced to scale back a sale of senior subordinated notes to \$400-million

(U.S.) after the company originally hoped to raise \$650-million.

There is hope among banks that the bond market will come around by the end of the year, and companies like CanWest and Quebecor would then seek new offerings of high-interest debt when the appetite returned.

"Presumably they'll use the bridge financing as an interim solution, then look to the high-yield market down the road when market conditions have improved," Mr. Wetmore said.

Note to Leonard: swim fast

Zena Olijnyk

From the January 15, 2007 issue of Canadian Business magazine

Well, CanWest finally did it. After years of trying to find a way into Canada's lucrative specialty-TV market, the conventional analog broadcaster has teamed up with Goldman Sachs Capital Partners, a division of New York-based investment behemoth Goldman Sachs, to mastermind a \$2.3-billion (\$53-a-share) deal to buy Toronto-based Alliance Atlantis Communications Inc. But what's more interesting than that it happened is how--with CanWest initially putting only \$132 million into the deal to gain control over Alliance's specialty division, which owns 13 channels and equity positions in several others. That sum represents just 17% of the specialty TV assets, whose total value is about \$1.5 billion. Goldman will take over Alliance Atlantis's 50% stake in the hugely successful CSI television franchise (CBS controls the other half) and a 51% stake in its motion picture distribution business.

According to the plan that Leonard Asper, CEO of CanWest Global Communications Corp., outlined to analysts on a Jan. 10 conference call, in 2011 the company will merge its conventional TV assets with the specialty division into a "new" CanWest. The broadcaster and Goldman will each take an equity stake in the company on the basis of the combined EBITDA of its two parts. "We will sell-in Global at a value, but the value will be determined by the combined profits of the business," Asper said. He added that the company expects to come out with more than 50% of the combined company. How? Well, Asper said that four years from now CanWest stock (TSX: CGS,CGS.A) will better reflect what he called its current "turnaround mode," which isn't now being seen in the market, and the company will also be in a better position to buy back equity from Goldman, which could then exit with a healthy profit.

A pretty clever arrangement, you might say, especially if it gets around federal restrictions on foreign ownership of broadcasting assets. Goldman provides upfront cash, while CanWest, which the Aspers control through a dual-class share structure, manages the specialty division as a wholly owned subsidiary. The hope is this will satisfy the Canadian Radio-television and Telecommunications Commission. As well, CanWest doesn't have to add to its substantial debt load, or rush a sale of other assets.

Asper admitted to reporters that the outcome of the deal leans strongly on the financial performance of the combined broadcasting assets. High profits will be crucial. "We put it all on our own shoulders to perform," he said, though having more speciality channels "enhances the likelihood Global will perform better."

He has a point. CanWest has been struggling as rival CTVglobemedia Inc. has been getting stronger, and it needs Alliance's specialty channels, like Showcase and History Television, to go with its conventional properties. Unlike analog, which relies on more cyclical ad revenue, specialty provides a stable cash stream from subscribers.

It would seem, however, that the Asper family is playing a high-stakes game that, come 2011, could see it lose its grip on the company. Leonard acknowledges this, but says it's not a huge issue whether the broadcaster ends up with 48% or 52%, since the goal is to own the entire company anyway. "They [Goldman] want to sell," he said. "They'd like to sell it to us to make a nice return." Asper wouldn't say if there is a guarantee of this, but noted Goldman has several options to liquidate its stake, which includes a public offering. "We have a right to buy them out; they have the right to find other ways to get out," he said.

Deals like this have been known to go very wrong. Take the example of Craig Media Inc., which used to own the Western-based A-Channel network. In 2003, Drew Craig, grandson of founder Johnny Craig, made a deal with Rhode Island-based Providence Equity Partners so that he could expand eastward with his new Toronto One station. Providence put up \$110 million, part of which was for a stake in Craig. The plan was for Providence to monetize its investment through a Craig Media IPO. But Toronto One was a failure, and Providence probably played a role in pulling the plug that forced Craig Media to sell. CHUM Ltd. bought the company for \$265 million, and the Craig family was left with far less than that.

Let's face it: U.S. private equity managers have shark-like instincts when it comes to ensuring that if there's only one winner, it's going to be them. If you play with sharks, you better know how to swim. Fast.

The deal to buy Alliance-Atlantis looks clever--but only if the business works.