



## Broadcasting Notice of Public Hearing CRTC 2007-5

Ottawa, 13 April 2007

### Diversity of Voices Proceeding

*On 13 March 2007, the Commission announced that, in light of the current wave of consolidation in the Canadian broadcasting industry, the Commission would hold a public hearing to review its approach to ownership consolidation and other issues related to the diversity of voices in Canada. Accordingly, the Commission will hold a public hearing beginning on Monday 17 September 2007 at 9 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec to consider these matters.*

*This public notice sets out the scope of this proceeding. The Commission invites written comments on the matters for consideration set out below. The deadline for written comments is Wednesday 18 July 2007.*

*The Commission notes that comments filed in response to Call for comments on the Canadian Broadcast Standards Council's proposed Journalistic Independence Code, Broadcasting Public Notice CRTC 2007-41, also issued today, will be considered in the context of this review.*

### Objectives of this Review

1. The Broadcasting Policy for Canada, set out in Section 3 of the *Broadcasting Act* (the Act), articulates a wide variety of objectives for the broadcasting system as a whole and for the various components of the system. In general terms, the Act describes a broadcasting system that reflects the varied demographics of the country and ensures that a diversity of voices is available to audiences.
2. Specifically, section 3(1)(d) states that:
  - the Canadian broadcasting system should
    - (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,
    - (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society,

3. Section 3(1)(i)(iv) states that:

the programming provided by the Canadian broadcasting system should

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern,

4. and, section 3(1)(o) states that:

programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

5. In section (5)(2), the Act sets out the following regulatory policies for the Commission:

The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;

(b) takes into account regional needs and concerns;

(c) is readily adaptable to scientific and technological change;

(d) facilitates the provision of broadcasting to Canadians;

(e) facilitates the provision of Canadian programs to Canadians;

(f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and

(g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

6. In order to implement the objectives of the Act, the Commission has established regulations and policies designed to ensure that the broadcasting system offers a diversity of voices and that programming reflecting the concerns of all Canadians has reasonable access to the system.
7. The current regulations and policies of greatest relevance to this proceeding are identified in the following section.
8. As the Canadian broadcasting system evolves in a rapidly changing communications environment it is appropriate to review this policy framework. The Commission considers that this is a suitable time for such a review for the following reasons:
  - The Commission's approach to common ownership in television was developed for analog, over-the-air (OTA) undertakings at a time when these services were largely locally owned and were the dominant force in the provision of television programming to Canadians.
  - The Commission has no common ownership policy in place with respect to specialty, pay, pay-per-view and video-on-demand (VOD) undertakings. In aggregate, these services now account for more viewing in Canada than OTA services. However, viewing to OTA services is still dominant in the French-language market.
  - Canadian broadcasting and distribution licensees are increasingly operating in an environment where they face competition not only from other licensees but also from largely unregulated new digital platforms. The Commission's ownership policies need to be examined in light of this evolving reality.
  - The Commission's policies with respect to the vertical integration of distribution, programming and/or production undertakings may need to be reviewed in order to respond to new realities and to provide the industry with clear guidelines for any future transactions.
  - The Commission has never assessed whether policies need to be in place with respect to the ownership of new media undertakings in order to ensure an appropriate diversity of voices on these important new platforms.
  - In light of the changing Canadian demographics, it is appropriate to review whether Commission policies need to be adapted in order to ensure that the voices of Aboriginal and ethnic Canadians, as well as those with disabilities, have appropriate access to the system.

9. The Commission, therefore, will conduct a comprehensive review of its policies with respect to diversity of voices. The overall objective of this review is to ensure that the system provides Canadians with the greatest possible diversity of voices, including editorial voices. The Commission's policies in this regard should take into consideration the increasing integration of all elements of the system. The result should be simple, comprehensive and clearly articulated policy guidelines that will further the evolution of the system.

### **Existing Commission Regulations and Policies**

10. The Commission has developed, over the years, a regulatory framework designed to ensure that the Canadian broadcasting system accurately reflects the diverse population served by its licensees. In particular, the framework takes into account the requirements of the Act that the system "shall be effectively owned and controlled by Canadians" and that the system "provide reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern."
11. The Commission implements its regulatory framework using a variety of regulatory tools.
12. In order to address the system as a whole, or issues related to particular classes of licensees within the system, the Commission may create specific regulations or issue public notices setting out general policies.
13. In order to address issues applicable to individual licensees, the Commission may impose specific conditions of licence or set out expectations to provide guidance.
14. While individual Commission decisions affect only specific parties, they may be generally informative to the broadcasting industry in terms of conveying relevant information, such as the interpretation of a regulation or policy.
15. In order to assist interveners, the following summarizes the main elements of the Commission's current regulatory framework with respect to diversity of voices and ownership consolidation. Interested parties are advised to consult the documents referenced for a full understanding of the Commission's current approach. Relevant documents are listed at the end of this notice.

### **Common Ownership of Broadcasting Undertakings**

16. For the purpose of the Commission's regulatory framework, the term "common ownership" refers to the number of broadcast licences, in a single media, held by a single entity (a person or a corporation) operating in one market.
17. Currently, common ownership policies exist only for the commercial radio and OTA television industries.

## OTA Television

18. The Commission reaffirmed, in *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999 (Public Notice 1999-97), its policy that generally permits ownership of no more than one over-the-air television station in one language in a given market. This policy is designed to ensure the diversity of voices in a given market and helps to maintain competition in each market. It is notable that most participants in the 1999 proceeding indicated that the Commission's current approach worked well and did not recommend any change. Since 1999, the Commission has addressed this issue in several decisions and has granted exceptions to the policy.

## Commercial Radio

19. In *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (Public Notice 1998-41), the Commission set out its common ownership policy for commercial radio stations. It stated that:
  - in markets with fewer than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band;
  - in markets with eight or more commercial stations operating in a given language, a person may be permitted to own or control as many four stations, but not more than two AM or two FM stations in that language.
  - Furthermore, persons filing applications under the radio common ownership policy are required to address the impact on diversity of news voices and the level of competition in the market.
20. In *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Public Notice 2006-158), which flowed from its recent review of its commercial radio policy, the Commission reaffirmed the existing common ownership policy for analog licensees.
21. In *Digital Radio Policy*, Broadcasting Public Notice CRTC 2006-160, 15 December 2006, the Commission issued its policy for the common ownership of digital radio undertakings. Under this policy the Commission will permit a person to own one digital radio undertaking for each analog radio undertaking permitted under the common ownership policy for analog commercial radio set out in Public Notice 1998-41.
22. In Public Notice 2006-158, the Commission re-examined its approach to local management agreements (LMAs). LMAs refer to agreements between two or more licensees (or their associates) that relate, directly or indirectly, to any aspect of the management, administration or operation of two or more stations that broadcast in the same market. The Commission currently examines LMAs to determine the potential impact on diversity of voices, competitive forces in a given market or a change in

effective control. All LMAs are subject to Commission approval. In light of concerns about the possible negative consequences of LMAs over time and the potential impact they might have on the diversity of voices that exist in a given market, the Commission found, in Public Notice 2006-158, that it would be appropriate to extend its LMA definition so that it applies to stations that operate in adjacent markets but whose contours overlap. The Commission will shortly launch a separate proceeding to amend the *Radio Regulations, 1986* to change the definition of an LMA.

#### Discretionary Television Services

23. The Commission has no explicit policies for common ownership of specialty, pay, pay-per-view and video-on-demand undertakings (discretionary services). In the case of discretionary services, the Commission has been of the view that no specific policy is necessary given the national scope of most of their licences.

#### Broadcast Distribution Undertakings

24. The Commission has allowed multiple ownership of BDUs, subject to certain safeguards. In *Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, 12 April 2002 (Decision 2002-84), the Commission approved applications to replace existing conditions of licence relating to structural separation for the Cancom satellite relay distribution undertaking and the Star Choice direct-to-home undertaking with new conditions. The new conditions provided that each of the undertakings must maintain independent sales, marketing and customer service functions as well as staff, and require adherence to confidentiality procedures. The confidentiality procedures are set out in a letter dated 20 September 2002 from the Commission to Mr. Ken Stein, Senior Vice President, Corporate and Regulatory Affairs, Shaw Communications Inc.

#### Concentration of Ownership

25. For the purpose of the Commission's regulatory framework, the term "concentration of ownership" refers to the level of market presence that an entity could have in terms of media outlets or market share (revenues or audience). It can be measured on a local, regional or national basis.
26. With respect to broadcasting undertakings, the Commission examines the overall public interest in the context of ownership transactions in order to ensure effective competition and a diversity of voices.
27. While issues of common ownership are generally market-specific, issues of concentration of ownership tend to be on a larger scale. Concerns respecting concentration of ownership most often occur during ownership transactions, when the potential market dominance of the acquiring entity can be measured in terms of revenues and overall audience share. In other words, "common ownership" issues tend to focus on the impact on a particular market; "concentration of ownership" issues tend to focus on the impact on the system as a whole.

28. The issue of concentration of ownership has most often arisen in the context of the OTA television market. With respect to multi-station ownership, pursuant to Public Notice 1999-97, the Commission now considers all of the licence renewals of a multi-station group at a single hearing in order to reduce the administrative and cost burdens for both the broadcasters and the Commission, and to provide the opportunity to make a strategic assessment of the contribution of all aspects of a licensee's operations to the broadcasting system.
29. In order to maintain a competitive marketplace with a diversity of voices, the Commission has required the divestiture of specific undertakings or imposed conditions of licence to ensure, for example, editorial discretion and journalistic independence.
30. The Commission makes a distinction between the largest multi-station ownership groups and the smaller ones. In the past, the Commission has imposed more obligations on the largest multi-station ownership groups due to their larger audience bases and revenue streams. The largest multi-station ownership groups are defined by the Commission as those licensed to operate in several provinces with a potential reach of more than 70% of the audience in their language of operation.

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

31. For the purpose of the Commission's regulatory framework, the term "cross-media ownership or horizontal integration" refers to the ownership, by one entity, of various media programming outlets (radio, TV, print) in a given market.
32. In Decision CRTC 97-482, 22 August 1997, transferring control of TQS inc. to Communications Quebecor inc. the Commission accepted a code of professional conduct proposed by the licensee. In that case, the code required the structural separation of newsgathering activities as well as the separation of news management and decision making on content and presentation. In *Transfer of effective control of TVA to Quebecor Média inc.*, Decision CRTC 2001-384, 5 July 2001, transferring control of TVA to Quebecor, and in the subsequent *Licence renewals for the French-language national television network TVA and for the French-language television programming undertaking CFTM-TV Montréal*, Decision CRTC 2001-385, 5 July 2001, the above code of professional conduct was maintained.
33. In *Licence renewals for the television stations controlled by CTV*, Decision CRTC 2001-457, 2 August 2001 (Decision 2001-457), and *Licence renewals for the television stations controlled by Global*, Decision CRTC 2001-458, 2 August 2001 (Decision 2001-458), the Commission expressed concern that cross ownership of television stations and newspapers, such as was the case with Bell Globemedia and *The Globe & Mail* and with Canwest Global Communications Inc. (Canwest) and *The National Post*, could eventually result in a reduction of the diversity of the information presented to the public

and of the diversity of distinct editorial voices available in the markets served. For example, under a completely integrated structure, the same editor could decide what matters would be investigated and what stories would be covered by a commonly owned television station and newspaper. Under such an integrated structure, the television station and the newspaper may no longer compete and might present a single editorial position and approach to the selection of stories considered relevant to the viewers and readers.

34. To address such concerns, the Commission imposed conditions of licence on CTV and Canwest. Similar conditions of licence were also imposed on Quebecor when the station Toronto One was transferred to TVA in *Transfer of effective control of Toronto One to TVA Group Inc. and Sun Media Corporation*, Broadcasting Decision CRTC 2004-503, 19 November 2004.
35. These conditions were intended to ensure that these licensees maintain separate and independent news management and presentation structures for television operations that are distinct from those of any affiliated newspaper.
36. In the above decisions, the Commission indicated that it would be prepared to consider suspending the application of the conditions of licence respecting cross-media issues if the licensee was able to enter into an agreement with the Canadian Broadcast Standards Council (CBSC) resulting in an industry-wide code, approved by the Commission, and provided the licensee remains a member in good standing of the CBSC. The Commission indicated that such a code of conduct must include an appropriate monitoring mechanism to be administered by the CBSC. It further stated that any application by the licensee to suspend these conditions of licence should include confirmation that the licensee supports the CBSC code of conduct, including the monitoring mechanism, and that the licensee is a member in good standing of the CBSC.
37. The Commission notes that, in a public notice released today, it has issued for public comment a proposed Journalistic Independence Code drafted by the CBSC. Comments submitted in that proceeding will be considered by the Commission as part of this proceeding on diversity of voices.

#### **Vertical Integration**

38. For the purpose of the Commission's regulatory framework, "vertical integration" refers to the ownership, by one entity, of both programming and distribution undertakings or, both programming undertakings and production companies.
39. The Commission has examined problems arising from vertical integration on a case-by-case basis, when considering applications for new services or for transfers of ownership or control involving broadcasters and independent production companies. The Commission acknowledges that the potential for preferential treatment exists in such



cases yet remains of the view that vertical integration can lead to benefits, such as cost savings and increased efficiencies. Appropriate safeguards, where required, are applied either broadly by regulation or on a case-by-case basis in the form of conditions of licence or expectations.

40. Where a broadcasting licensee is affiliated with a production company, the Commission expects the licensee to address issues arising from vertical integration at the time of licensing or licence renewal. Often, the Commission has imposed a limit on the amount of programming that may be used from the affiliated production company. The Commission also expects most television licensees to acquire a minimum amount of programming from independent producers.
41. In *Ownership of analog discretionary services by cable undertakings – amendment to the Commission’s polity*, Public Notice CRTC 2001-66-1, 24 August 2001, the Commission authorized cable companies and their related entities, as a matter of broadcasting policy, to purchase interests, including controlling interests, in Canadian analog pay and specialty programming services (subject to several conditions to ensure fairness in the market).
42. In *Licensing framework for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission stated that BDUs could own such services. To address concerns about the potential for undue preference, the Commission also specified that, for each Category 2 specialty service affiliated to a BDU that it carries, the BDU must carry 5 non-affiliated services. Subsequently, the Commission incorporated this policy into the *Broadcasting Distribution Regulations* (the Distribution Regulations). The Distribution Regulations also address the distribution of non-affiliated pay audio services and exempt programming services.

#### **The Benefits Policy**

43. In general, when considering an application involving a transfer of ownership or control of a broadcasting undertaking, the Commission requires the prospective purchaser to identify the significant and unequivocal benefits that would flow to the subscribers and/or the community served by the undertaking, and to the Canadian broadcasting system as a whole, as a direct result of the transaction (the benefits test). The onus is on the applicant to demonstrate that the application filed is the best possible proposal under the circumstances and that the benefits proposed in the application are commensurate with the size and nature of the transaction.
44. The benefits test serves the purpose of ensuring that the Commission, in dealing with such transfers, is presented with the best possible proposal, taking into account the size and nature of the proposed transaction.

45. In *Call for comments on a proposed approach for the regulation of broadcasting distribution undertakings*, Public Notice CRTC 1996-69, 17 May 1996, the Commission announced that, in assessing an application for the authority to transfer the ownership or effective control of a BDU, it will no longer require prospective purchasers to identify the significant and unequivocal benefits that will result if the transaction is approved. The benefits test still applies, however, to the transfer of over-the-air television undertakings and networks, radio stations, pay and specialty services.
46. In Public Notice 1999-97, the Commission stated its expectation for all television broadcasting undertakings, including pay and specialty services, in respect of all transfers of ownership or control to make commitments to clear and unequivocal tangible benefits representing a financial contribution of ten percent of the value of the transaction, as accepted by the Commission.
47. As noted in Public Notice 2006-158, in the context of applications for the transfer of ownership or control of radio broadcasting undertakings, applicants make commitments to Canadian content development (CCD). Such applicants are currently required to make a minimum direct financial contribution of six percent of the value of the transaction to CCD. In radio, where undertakings involved in ownership transactions are not financially healthy, no benefits payment is necessary.

#### **Licence Trafficking**

48. Over the years, the Commission has received applications involving a change of ownership or effective control of broadcasting undertakings either during the first term of licence, or within a relatively short time after they have been acquired by the vendor.
49. A broadcasting licence is a privilege that is granted as the result of an extensive public process that often involves competitive applications. The decision to award a licence to a specific party is based on the merits of the application. The decision takes into consideration the benefits that will accrue both to the Canadian broadcasting system and to those that will be served by the proposed broadcasting undertaking. Consequently, a sale of a newly licensed broadcasting undertaking brings into question the original licensing process and the extent to which the vendor will profit from the sale.
50. The Commission has addressed the issue of licence trafficking in several decisions including Decision CRTC 89-766, 28 September 1989, involving Maclean-Hunter Limited; Decision CRTC 93-22, 22 January 1993, involving CHQT Broadcasting Ltd.; *Change in control of CHRD-FM and CFEI-FM*, Public Notice CRTC 1999-96, 4 June 1999; *Acquisition of the assets of CHNO-FM*, Decision CRTC 2001-689, 9 November 2001, *Transfer of control of the category 1 digital specialty service Independent Film Channel Canada (IFCC)*, and of 20 other category 2 digital specialty services, through the acquisition of all of the shares of *Salter Street Broadcasting Limited*, Decision CRTC 2001-752, 13 December 2001, *Exchange of radio assets in Quebec between Astral Media Radio inc. and Corus Entertainment Inc.*, Broadcasting Decision CRTC 2005-15, 21 January 2005, and *CJUK-FM Thunder Bay – Acquisition of assets*, Broadcasting Decision CRTC 2005-192, 10 May 2005.

### **Ownership of New Media Undertakings**

51. In *Exemption order for new media broadcasting undertakings*, Public Notice CRTC 1999-197, 17 December 1999 (Public Notice 1999-197), the Commission defined new media broadcasting undertakings as undertakings that provide broadcasting services delivered and accessed over the Internet. For the purpose of this proceeding, however, “new media” refers any programming or distribution undertakings that carry “broadcasting,” as defined in the Act, using digital technologies and not currently licensed by the Commission.
52. The Commission currently has no regulations or policies with respect to the ownership of new media undertakings.
53. In Public Notice CRTC 1999-197, the Commission issued an order that exempts from licensing requirements and associated regulations, without terms or conditions, all new media broadcasting undertakings that operate in whole or in part in Canada. New media broadcasting undertakings are those undertakings that provide broadcasting services delivered and accessed over the Internet.
54. In *Exemption order for mobile television broadcasting undertakings*, Broadcasting Public Notice CRTC 2007-13, 7 February 2007, the Commission exempted from licensing requirements and associated regulations those mobile television broadcasting undertakings that provide mobile television services that are received by way of mobile devices, including cellular telephones and personal digital assistants. The undertaking must use point-to-point technology to deliver the service; that is, the undertaking transmits a separate stream of broadcast video and audio to each end-user.

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

55. Section 3(1)(d)(iii) of the Act requires that the Canadian broadcasting system be reflective of the multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within that society. This objective is currently being fulfilled via two approaches: (a) the licensing or authorization of services targeted to specific communities, and (b) cultural diversity requirements for all television and radio licensees.
56. In the first instance, the *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999, and the *Native Broadcasting Policy*, Public Notice CRTC 1990-89, 20 September 1990 have resulted in the licensing of a variety of services by and for a range of ethno-cultural and Aboriginal communities. *The Broadcasting Monitoring Report 2006* provides further details, including lists of services that are currently offered in the system in this regard.
57. In the second instance, the Commission now requires television and radio broadcasters to develop appropriate strategies for ensuring that all programming is reflective of the cultural diversity of the markets they serve. When the Commission refers to cultural diversity in this regard, it is referring to the inclusion of groups that have been

traditionally under-represented in broadcasting: ethnocultural minorities, Aboriginal peoples, as well as persons with disabilities. Such under-representation includes these groups' presence and portrayal on the air and their participation in the industry. For further details concerning the Commission's requirements for television undertakings, please refer to *The Broadcasting Monitoring Report 2006*. For further details concerning the Commission's requirements for radio undertakings, please refer to Public Notice 2006-158.

### **Competition Bureau and Commission Interface**

58. On 22 November 1999, the Competition Bureau and the Commission announced, by news release, their joint document entitled *CRTC/Competition Bureau Interface* dated 8 October 1999. This document described the authority of the two agencies regarding the telecommunications and broadcasting sectors in order to provide interested parties with greater clarity and certainty as to the overall regulatory and legal framework governing the two sectors.

### **Specific Issues for Consideration**

#### **59. Common Ownership of Broadcasting Undertakings**

Definition: "Common ownership" refers to the number of broadcast licences, in a single media, held by a single entity (a person or a corporation) operating in one market.

#### OTA TV Issues

- What criteria should the Commission use in order to evaluate the impact of ownership transactions on the diversity of voices in a market?
- The Commission has approved several exceptions to the existing policy of generally one station, per owner, per market. Should this policy be retained, modified or abolished?

#### Discretionary TV Issues

- The Commission currently has no policy limiting the common ownership of discretionary services. Is such a policy necessary? If so, why?
- If limits on the common ownership of discretionary services are appropriate, what criteria should be used to determine these limits?

#### Radio Issues

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

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

#### Distribution Issues

- The Commission has permitted, subject to specific safeguards, the common ownership of broadcasting distribution undertakings. In light of the evolution of the BDU sector, is this policy still appropriate?
- Are safeguards such as those set out in Decision 2002-84 effective? If not, what alternative measures would be more effective?
- Does common ownership of distribution undertakings raise concerns with respect to diversity of voices? If so, how should these concerns be addressed?

#### 60. **Concentration of Ownership**

Definition: “Concentration of Ownership” refers to the level of market presence that an entity could have in terms of media outlets or market share (revenues or audience). It can be measured on a local, regional or national basis.

- How should the Commission balance the need to encourage strong broadcast undertakings capable of contributing to the objectives of the Act with the need to ensure a diversity of voices in the broadcasting system?
- The Commission currently has no specific criteria for measuring concentration of ownership within the Canadian broadcasting system. Are such criteria necessary? If so, what measures would be most appropriate?

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

Definition: “Cross-media ownership or horizontal integration” refers to the ownership, by one entity, of various media programming outlets (radio, TV, print) in a given market.

#### Broadcasting and newspapers

- The Commission established, in 2000, policies and safeguards with respect to the cross-media ownership of television undertakings and newspapers. These are set out in conditions on the relevant licences. Have these conditions of licence been effective in dealing with concerns over diversity of editorial voices?
- Is there a similar concern with respect to the cross-ownership of radio and newspapers? If so, what would be the most effective way of dealing with these concerns?

## Television and Radio

- Many Canadian broadcasters own both television and radio undertakings in the same market. Does this raise any significant concerns with respect to diversity of voices?
- Should the Commission consider measures to encourage greater diversity of voices in respect of the ownership of both radio and TV? If so, what measures might be effective?

## 62. Vertical Integration

Definition: “vertical integration” refers to the ownership, by one entity, of both programming and distribution undertakings or, both programming undertakings and production companies.

### Programming undertakings and distribution undertakings

- The Commission has permitted the ownership, by one entity, of both distribution and programming undertakings. To what extent, if any, has this affected the diversity of voices in the broadcasting system?
- What, if any, limits on this type of vertical integration should the Commission impose?
- What measures would be most effective in addressing the impact of this type of vertical integration?
- Currently, the Commission requires BDUs to carry five non-related services for each affiliated Category 2 service that they carry. Does this policy adequately safeguard against undue preference on the part of BDUs?

### Programming undertakings and production companies

- Television licensees are permitted to own television production companies, subject to certain safeguards. Have these safeguards been effective in dealing with concerns of preferential treatment?
- Has the above approach been effective in promoting a strong Canadian independent production sector?
- Are measures related to this type of vertical integration necessary to further the objectives of the Act? If so, what measures would be most effective?
- Are concerns regarding vertical integration intensified when a single entity controls programming undertakings, production companies and distribution undertakings? Should the Commission consider measures to encourage greater diversity of voices in such situations? If so, what measures might be effective?

63. **The Benefits Policy**

- How does the Commission's benefits policy further the diversity of voices in the broadcasting system?
- How might changes to the benefits policy increase the diversity of voices?

64. **Licence Trafficking**

Definition: Licence trafficking may apply in situations where a licensee applies for a transfer of ownership or control of its broadcasting undertaking either during the first licence term of its licence, or within a relatively short time after it has been acquired. Such situations may raise concerns related to the preservation of the integrity of the Commission's licensing process and the extent to which the vendor will profit from the sale.

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

65. **Ownership of New Media**

Definition: In Public Notice 1999-197, the Commission defined new media broadcasting undertakings as undertakings that provide broadcasting services delivered and accessed over the Internet. For the purposes of this proceeding, "new media" refers to programming or distribution undertakings that carry "broadcasting," as defined in the Act, using digital technologies and not currently licensed by the Commission.

- The Commission has no policies with respect to the cross-ownership of licensed broadcasting undertakings and new media undertakings. Is such a policy necessary or appropriate? If so, why? If not, why not?
- Should the Commission actively encourage existing broadcasting licensees to own new media undertakings in order to ensure a Canadian presence on these new platforms?
- Does the cross-ownership of licensed broadcasting undertakings and new media undertakings further the objectives of the Act? If not, should the Commission intervene? If the Commission should intervene, what form should the intervention take?

66. **Ensuring Broadcast Voices that Represent and Reflect Canada's Diversity**

- The Commission has licensed a variety of undertakings that broadcast to specific communities, including ethno-cultural communities and Aboriginal peoples. Further, the Commission requires all broadcasters to accurately reflect Canada's diversity through their programming. Has the increased consolidation in the Canadian broadcasting system limited or enhanced the ability of the system to accomplish these cultural diversity objectives?
- Should the Commission's policies encourage the ownership participation of minority group representatives in the broadcasting system? If so, how?

67. **Relationship with the Competition Bureau**

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

**Key reference documents**

**Public Notices**

*Native Broadcasting Policy*, Public Notice CRTC 1990-89, 20 September 1990

*Call for comments on a proposed approach for the regulation of broadcasting distribution undertakings*, Public Notice CRTC 1996-69, 17 May 1996

*Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

*Change in control of CHRD-FM and CFEI-FM*, Public Notice CRTC 1999-96, 4 June 1999

*Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

*Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999

*Exemption order for new media broadcasting undertakings*, Public Notice CRTC 1999-197, 17 December 1999

*Licensing framework for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

*Ownership of analog discretionary services by cable undertakings – amendment to the Commission's policy*, Public Notice CRTC 2001-66-1, 24 August 2001



*Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

*Digital Radio Policy*, Broadcasting Public Notice CRTC 2006-160, 15 December 2006

*Exemption order for mobile television broadcasting undertakings*, Broadcasting Public Notice CRTC 2007-13, 7 February 2007

## **Decisions**

Decision CRTC 89-766, 28 September 1989

Decision CRTC 93-22, 22 January 1993

Decision CRTC 97-482, 22 August 1997

*Transfer of effective control of TVA to Quebecor Média inc.*, Decision CRTC 2001-384, 5 July 2001

*Licence renewals for the French-language national television network TVA and for the French-language television programming undertaking CFTM-TV Montréal*, Decision CRTC 2001-385, 5 July 2001

*Licence renewals for the television stations controlled by CTV*, Decision CRTC 2001-457, 2 August 2001

*Licence renewals for the television stations controlled by Global*, Decision CRTC 2001-458, 2 August 2001

*Acquisition of the assets of CHNO-FM*, Decision CRTC 2001-689, 9 November 2001

*Transfer of control of the category 1 digital specialty service Independent Film Channel Canada (IFCC), and of 20 other category 2 digital specialty services, through the acquisition of all of the shares of Salter Street Broadcasting Limited*, Decision CRTC 2001-752, 13 December 2001

*Amendments to conditions of licence relating to structural separation for Cancom and Star Choice*, Broadcasting Decision CRTC 2002-84, 12 April 2002

*Transfer of effective control of Toronto One to TVA Group Inc. and Sun Media Corporation*, Broadcasting Decision CRTC 2004-503, 19 November 2004

*Exchange of radio assets in Quebec between Astral Media Radio inc. and Corus Entertainment Inc.*, Broadcasting Decision CRTC 2005-15, 21 January 2005

*CJUK-FM Thunder Bay – Acquisition of assets*, Broadcasting Decision CRTC 2005-192, 10 May 2005

#### **Other documents**

*CRTC/Competition Bureau Interface*, 8 October 1999

*Letter to Mr. Ken Stein*, Shaw Communications Inc., 20 September 2002.

*Broadcasting Monitoring Report 2006*

#### **Public proceeding**

68. The Commission will hold a public hearing commencing on **Monday 17 September 2007** at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec to address the matters set out in this notice.
69. The Commission invites written comments that address the issues and questions set out above. The deadline for filing written comments is **Wednesday 18 July 2007**.
70. The Commission will only accept submissions that it receives on or before the prescribed date noted above.
71. Following the oral public hearing, interested parties may have an opportunity to file brief final written comments.
72. Parties wishing to appear at the public hearing must state their request on the first page of their written submissions. Parties requesting appearance must provide clear reasons, on the first page of their submissions, as to why the written submission is not sufficient and why an appearance is necessary. The Commission will subsequently inform parties whether their request to appear has been granted. While submissions will not otherwise be acknowledged, they will be considered by the Commission and will form part of the public record of the proceeding, provided the procedures set out herein have been followed.

#### **Procedures for filing comments**

73. Interested parties can file their comments to the Secretary General of the Commission:
  - **by using the**  
[Broadcasting Intervention/Comments Form](#)

OR

- **by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

OR

- **by fax at**  
819-994-0218

74. Submissions longer than five pages should include a summary.
75. Please number each paragraph of your submission. In addition, please enter the line \*\*\*End of document\*\*\* following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

### **Important notice**

76. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's Web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
77. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
78. Documents received electronically or otherwise will be put on the Commission's Web site in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
79. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the webpage of this particular public process. As a result, a general search of our Web site with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.
80. The Commission encourages interested parties to monitor the public examination file and the Commission's Web site for additional information that they may find useful when preparing their comments.

**Examination of public comments and related documents at the following  
Commission offices during normal business hours**

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

**Central Building**

Les Terrasses de la Chaudière

1 Promenade du Portage, Room 206

Gatineau, Quebec K1A 0N2

Tel.: 819-997-2429

Fax: 819-994-0218

**Metropolitan Place**

99 Wyse Road

Suite 1410

Dartmouth, Nova Scotia B3A 4S5

Tel.: 902-426-7997

Fax: 902-426-2721

**205 Viger Avenue West**

Suite 504

Montréal, Quebec H2Z 1G2

Tel.: 514-283-6607

**55 St. Clair Avenue East**

Suite 624

Toronto, Ontario M4T 1M2

Tel.: 416-952-9096

**Kensington Building**

275 Portage Avenue

Suite 1810

Winnipeg, Manitoba R3B 2B3

Tel.: 204-983-6306

TDD: 204-983-8274

Fax: 204-983-6317

**Cornwall Professional Building**

2125 - 11<sup>th</sup> Avenue

Room 103

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Tel.: 780-495-3224

530-580 Hornby Street  
Vancouver, British Columbia V6C 3B6  
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TDD: 604-666-0778  
Fax: 604-666-8322

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*