



August 23, 2010

Via CRTC comments/interventions form

Mr. Robert A. Morin
Secretary General
Canadian Radio–television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2010–498, Item #2 – Application by Shaw Communications Inc., on behalf of Canwest Global Communications Corp. and its operating subsidiaries/licensees, for authority to transfer effective control of Canwest Global’s broadcasting entities to Shaw, through a wholly owned subsidiary of Shaw known as 7316712 Canada Inc. (Application No. 2010–0550–5)

1. The Canadian Media Production Association (the “CMPA” or the “Association”), formerly known as the Canadian Film and Television Production Association, welcomes the opportunity to provide these **comments** regarding the above–referenced Notice of Consultation. The CMPA offers **conditional support** of the transaction, provided that the issues and concerns detailed in this intervention are meaningfully addressed.
2. Given the importance of this proceeding to our members, the CMPA requests the opportunity to appear at the public hearing scheduled to commence on September 20, 2010 in Calgary, Alberta to elaborate on its views expressed in this intervention.
3. The CMPA represents the interests of screen–based media companies engaged in the production and distribution of English–language television programs, feature films, and new media content in all regions of Canada. Our 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

4. Independent producers provide Canadians with a Canadian perspective on our country, our world, and our place in it on multiple platforms. Through the content we produce, we help foster Canadian cultural and entertainment choices and reflect the rich diversity of this country. As such, the independent production sector plays a vital role in the Canadian broadcasting system, as recognized in the *Broadcasting Act*.
5. As the creative and business force behind quality Canadian programming on multiple platforms, Canada's independent producers help further the Government of Canada's broadcasting and communications policy objectives.
6. The CMPA would like to state for the record that the positions taken in this intervention were developed without conflict of interest, in accordance with the Association's Arm's-Length Governance Guidelines.

Executive Summary

7. The CMPA conditionally supports Canwest's broadcasting assets being transferred to Shaw, provided that the issues and concerns expressed in this intervention are addressed in a meaningful way. Canadian independent producers look forward to an expanded and strong relationship with Shaw as it works to develop new business models for Canadian broadcasting built on making Canadian programming its number one priority.
8. The CMPA's concerns with respect to this transaction are threefold: (a) the potential for anti-competitive behaviour arising from further broadcaster consolidation and the need to establish effective safeguards to prevent such behaviour; (b) arriving at the appropriate valuation of the transaction; (c) determining the appropriate quantum and allocation of tangible benefits funds.
9. Approval of the Shaw-Canwest transaction would see Shaw become the most vertically integrated media company in the country. As such, the potential for Shaw to engage in anti-competitive behaviour with respect to its dealings with independent producers is significant. Accordingly, the CMPA has suggested the following measures or safeguards in this intervention to mitigate the potential for such behaviour:
 - The Commission should carefully examine the transaction with its Diversity of Voices policy in mind, based on the fact that Shaw's control of audience share would be very close to the 35% level nationally.
 - The CMPA appreciates Shaw's assurances that a Shaw-owned Canwest and Corus will be operated as distinct and separate entities post-restructuring. We would nevertheless submit that it is critical that the Commission take the appropriate regulatory steps to ensure that the programming services between these two broadcasting groups remain truly operationally separate, and fully competitive, with each other. One such step would

be to require that each broadcast group operate separate programming departments (separate broadcast executives with decision-making power) and separate legal/business affairs departments.

- A related concern is the potential for a programming service in one broadcast group acquiring rights to an independently produced program for the benefit of both broadcast groups, whether directly or by securing sublicensing rights from the independent producer. For reasons of preserving competition, both of these rights licensing arrangements should be prohibited by the Commission **by condition of licence.**
- An independent producer who attempts to negotiate with a giant vertically and horizontally integrated Shaw/Canwest will be at an enormous – if not insurmountable – bargaining disadvantage. **Shaw should therefore be required, by condition of licence, to conclude a Terms of Trade agreement with the CMPA within sixty days of the Commission’s approval of the transaction.**
- In order to facilitate the conclusion of an agreement between Shaw and the CMPA within the suggested sixty-day timeframe, the CMPA proposes that a member of the Commission’s Alternative Dispute Resolution department attend the negotiations as an **observer only.**

10. With respect to the value of the transaction, the CMPA strongly disagrees with the arguments put forward by Shaw in support of its valuation of \$506 million for this transaction. We respectfully submit that a fair and thorough analysis should lead the Commission to conclude that the true value of the Shaw–Canwest transaction is at least \$2.005 billion.
11. The Association also disagrees with Shaw that Canwest’s “financial distress” and the intangible benefits of the transaction noted by Shaw outweigh the requirement to pay sufficient tangible benefits in this transaction. The CMPA respectfully submits that, given our submission that the true value of the Shaw–Canwest transaction is at least \$2.005 billion, the revised tangible benefits proposal totalling \$108 million put forward by Shaw is significantly insufficient in terms of quantum. As per CRTC policy, benefits should be payable totalling no less than 10% of the value of the transaction.
12. The Association respectfully submits that it is appropriate and necessary to impose specific safeguards with respect to the self-directed tangible benefits package in this transaction. The CMPA proposes that the following conditions be placed on the benefits package as a condition of approval of the transaction, some of which are already standard criteria under the general benefits policy or have been imposed in past transactions:
 - Benefits expenditures must be incremental to existing and ongoing Canadian programming expenditure requirements. The Commission should ensure incrementality by condition of licence;

- 75% of all tangible benefits expenditures should be directed to the development and production of new, incremental programming and related new media initiatives in the categories of drama, documentary, or children's/youth. All of this programming should be produced by independent producers, by condition of licence;
- Independent productions funded through the benefits package should be encouraged from across Canada for the purpose of ensuring regional reflection;
- Consistent with the approach taken in the BCE-CTV transaction in 2000, any and all consideration that is received by Shaw/Canwest or any related company from the sale or distribution of the incremental drama, documentary, or children's/youth programming and related new media programming to entities other than Canwest's broadcasting services, net of reasonable sales expenses actually incurred in respect of the distribution of such programs to unaffiliated companies, shall, by condition of licence, be added to the tangible benefits funds and shall be used to fund additional incremental Canadian drama, documentary, or children's/youth programs and related new media programs on the same basis. Similarly, all profits earned by Shaw/Canwest or any related company from equity investments in this incremental Canadian programming, shall, by condition of licence, also be added to the tangible benefits funds and shall be used to fund additional incremental Canadian drama, documentary, or children's/youth programs and related new media programs on the same basis;
- None of the benefits monies are to be used for administrative costs;
- Annual reports – audited by an independent, third party – must be filed, detailing expenditures, incrementality, and any other information the Commission requires related to the tangible benefits package (including details of any and all consideration for the sale or distribution of, or any profits earned by Shaw/Canwest from equity investments in, programming funded through tangible benefits, as per the condition above). Benefits reports should be publicly available; and
- Benefits funds should be expended in roughly equal amounts throughout the benefits period (i.e. over 5 to 7 years).

Background of the Transaction

13. On October 6, 2009, Canwest Global Communications Corp. ("Canwest"), along with its operating subsidiary Canwest Media Inc. ("CMI") and certain other subsidiaries, filed for creditor protection under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA").
14. In November 2009, Canwest, with the assistance of RBC Capital Markets, commenced an equity solicitation process to identify potential new Canadian investors.

15. On February 19, 2010, after arms-length negotiations between Shaw Communications Inc. ("Shaw"), Canwest, and the Ad Hoc Committee (comprised of holders of over 70% of the 8% senior subordinated notes issued by CMI due in 2012), Canwest's board of directors approved Shaw's offer.
16. On March 31, 2010, Shaw filed an application with the CRTC for approval of its acquisition of effective control of the conventional and specialty television undertakings indirectly owned by Canwest. Under that original offer, Shaw was to subscribe for Class A Voting shares representing a 20% equity and 80% voting interest in Restructured Canwest for a minimum \$95 million in the aggregate.
17. On May 3, 2010, Shaw acquired from Goldman Sachs & Co. affiliates ("Goldman Sachs") 29.9% of the voting shares and 49.9% of the common non-voting shares in the capital of CW Investments Co. ("CWI").
18. On May 4, 2010, Shaw advised the Commission that, pursuant to an amendment to the March 31, 2010 application, Shaw's indirect equity interest would be 100% of Restructured Canwest. Shaw also advised that, in addition to acquiring the shares of CWI indirectly held by Canwest it would acquire, by way of an option, the remaining shares held by Goldman Sachs in the capital of CWI, immediately following Commission approval of the application.
19. Following approval of the proposed transaction, Shaw, through its wholly-owned subsidiary 7316712 Canada Inc., would become the sole owner of Restructured Canwest and of CWI, and would acquire control of all broadcasting undertakings currently controlled by Canwest.

The Application

20. Shaw (or the "Applicant"), on behalf of Canwest and its operating subsidiaries/licensees, is seeking authority to transfer effective control of Canwest's broadcasting entities to Shaw, through a wholly owned subsidiary of Shaw known as 7316712 Canada Inc.
21. According to the Notice of Consultation, the Applicant has ascribed a total value for the acquisition of all broadcasting assets owned by Canwest of \$2.005 billion and has proposed a tangible benefits package in the amount of \$23 million. Shaw has proposed that all of the tangible benefits expenditures be allocated to convert Canwest's remaining 35 non-mandatory transmitters to digital in smaller markets across Canada.
22. Given Canwest's CCAA status, Shaw has taken the position that it is rescuing a distressed asset in agreeing to acquire 100% of Canwest. Moreover, the Applicant argues that the acquisition of Goldman Sachs' interests in CWI does not confer upon Shaw any transfer of control, and thus this portion of the overall transaction should not be considered a part of the value of the transaction and no benefits should attach to it. Accordingly, Shaw submits that the value of the transaction is \$506 million, notwithstanding the total purchase price of just over \$2 billion.

23. Shaw has advanced two main reasons why it should not have to pay tangible benefits in the amount normally required under the Commission's benefits policy (i.e., totalling 10% of the value of the transaction).
24. First, Shaw argues that the Commission, has, in the past, exempted failing undertakings from the requirement to pay tangible benefits.
25. Second, the Applicant maintains that the proposed transfer of control of Canwest's broadcasting assets to Shaw provides a number of intangible benefits to the Canadian broadcasting system that override the importance of tangible benefits and thus merit a discretionary or flexible approach to the application of the Commission's tangible benefits policy. The Applicant states that the intangible benefits of the transaction include the following:
 - ensuring that Canwest emerges expeditiously from CCAA protection, which has strained morale, made employee retention difficult, threatened to destabilize Canwest's relationships with its suppliers and customers, and challenged Canwest's ability to make forward-looking investments necessary to maintaining its competitiveness;
 - preserving Canwest as a 100% Canadian-owned, integrated going concern and removing the risk of a piecemeal liquidation of its assets;
 - allowing Canwest to remain a strong local television voice across Canada and strengthening local programming;
 - increasing Canwest's competitiveness by supporting its ability to benefit fully from the distribution of its content across multiple platforms;
 - preserving the benefits of the Alliance Atlantis/Canwest merger;
 - enabling Canwest to benefit from the management expertise of a new owner that can develop innovative ways to market and promote Canwest's content in the digital environment; and
 - preserving dynamic competition and diversity of voices in English-language broadcasting through the maintenance of a strong, healthy industry group.
26. In a deficiency letter to Shaw dated May 26, 2010, CRTC staff asked Shaw to indicate in detail what tangible benefits initiatives it would propose should the Commission determine that its proposal was not sufficient and/or appropriate and it required a tangible benefits package valued at 10% of the value of the transaction.
27. In the event that the Commission rejects Shaw's arguments regarding the value of the transaction and its request for flexibility with respect to the quantum of public benefits, Shaw proposed in a letter dated July 12, 2010 a revised tangible benefits package totalling \$108 million, as detailed below.

- **Digital transmitters in non-mandatory markets** – \$23 million to convert Canwest’s remaining 35 non-mandatory transmitters to digital in smaller markets across Canada “as resources permit and as soon as possible.”
- **Additional programming content** – \$42 million on the development and creation of new, incremental Canadian linear and new media content, as follows:
 - o \$4 million for the development of scripted Category 7 (Drama) programs;
 - o \$18 million for the production of scripted Category 7 programs, which would air on Global TV and/or Showcase;
 - o \$2 million for associated third-party promotion; and
 - o \$18 million for the development or provision of one or more of the following program-related new media applications specifically tied to new incremental programming initiatives flowing from the benefits package:
 - program-specific websites;
 - mobile and video-on-demand initiatives;
 - production of 3D high-definition content;
 - interactive games;
 - development of short features or “webisodes” to promote the linear broadcast; and
 - promotion of domestic programming on social network sites.
- **New morning newscasts** – \$43 million to reintroduce/introduce local morning newscasts to the following Global TV stations/markets: CIII-TV Toronto, CKND-TV Winnipeg, CFRE-TV Regina, and CFSK-TV Saskatoon.

28. Given that Canwest has not yet emerged from protection under the CCAA, Shaw states that it has limited access to the detailed information necessary to make fully informed decisions on specific, incremental benefits that would be beneficial to both the broadcasting system and to the recovery of Canwest. Accordingly, Shaw requests the opportunity to clarify the specifics of the proposed benefits set out in the attachment within one year of the Commission’s approval of the transfer of control.
29. The Applicant also requests the ability to implement its revised tangible benefits commitments over a ten-year period from the date of approval of the change of control, arguing that there is a need to ensure that all available resources are dedicated primarily to the objective of helping Canwest emerge from creditor protection as a strong and healthy competitor in the broadcasting market.

The Notice of Consultation

30. Considering the size and scope of the proposed transaction, the Commission states in the Notice of Consultation that it may discuss in this proceeding, among other things, the following:

Ownership

- In the context of the proposed consolidation involving two major broadcasters, the Commission may wish to discuss the potential impact on the television market (i.e., market power that Shaw could enjoy and the potential to adopt anti-competitive behaviour), and may examine various related ownership issues.

Value of the transaction and the proposed benefits package

- The Commission may wish to discuss the value of the transaction applied to the assets and how these values have been allocated between the broadcasting undertakings.
 - The Commission may also wish to discuss the proposed benefits package in terms of incrementality, acceptability, and proposals in respect of any benefits that may be found to be unacceptable to the Commission. In this regard, the CRTC notes that, in applying its benefits test, it has been consistent and rigorous in requiring that (1) expenditures proposed as tangible benefits be truly incremental; (2) such expenditures be directed to projects and initiatives that would not be undertaken or realized in the absence of the transaction; and (3) as generally required, applicants demonstrate that expenditures proposed as tangible benefits flow predominantly to third parties, such as independent producers.
31. The CMPA addresses these issues and others in turn below, and responds to the arguments and proposals put forward by Shaw in its Application.

The CMPA's Comments

General CMPA Comments about the Transaction

32. At the outset, the CMPA wishes to acknowledge the importance of a company with the financial strength and stability of Shaw stepping in to breathe new life into Canwest, and allow it to make greater contributions to the Canadian broadcasting system. As such, the CMPA offers **conditional support** of the transaction, provided that the issues and concerns detailed in this intervention are meaningfully addressed.

33. Having said that, we respectfully disagree with Shaw that Canwest's "financial distress" and the intangible benefits of the transaction noted by Shaw outweigh the requirement to pay sufficient tangible benefits in this transaction. We elaborate further on this point in the sections below discussing the value of the transaction and the proposed tangible public benefits.
34. From our perspective, it is also a breath of fresh air to have a company with a positive outlook on the future of the Canadian broadcasting system increase its stake in the industry, rather than have more of the "doom and gloom" rhetoric that has been articulated over the last few years from certain existing players.
35. For example, Shaw expressed the view at the public hearing related to the CRTC's review of its over-the-air (OTA) TV policy in November 2006 that "the future is incredibly bright for broadcasters, distributors, and consumers."¹
36. Even after the global economic downturn, Shaw appears to remain optimistic about the future prospects of Canadian broadcasting in general, and Canwest in particular, as evidenced by this transaction. In announcing its agreements to acquire 100% of Canwest's broadcasting assets on May 3, 2010, Shaw stated the following:

"We are pleased to announce that we have come to an agreement with all constituent parties involved in a restructured Canwest, including Goldman Sachs, and are excited about the opportunity to acquire the entire company now... The recent restructuring initiatives undertaken by Canwest have positioned it as a pure play Canadian broadcaster and we are excited about this transformative transaction for Shaw as we believe the combination of content with our cable and satellite distribution network, and soon to be wireless service, will position us to be one of the leading entertainment and communications companies in Canada," said Jim Shaw, Chief Executive Officer and Vice Chair, Shaw Communications Inc.²
37. In a conference call with financial analysts on the same day of the announcement, Shaw executives discussed in detail the benefits to Shaw of the transaction, including that ownership and access to rights will be a valuable asset. A copy of Shaw's presentation is included as part of our intervention as "Appendix A".
38. Moreover, in the context of the Commission studying whether to introduce a fee-for-carriage or value for signal compensation regime for conventional television broadcasters during the past few years, Shaw has repeatedly expressed the view that conventional TV broadcasters do not have a revenue problem, they have spending and debt problems. The CMPA has expressed the same view.

¹ Transcript of Shaw Communications' appearance at the public hearing related to *Broadcasting Notice of Public Hearing CRTC 2006-5* – Review of certain aspects of the regulatory framework for over-the-air television, November 30, 2006, at paragraph 5981.

² Shaw Communications news release, "Shaw Announces Acquisition of a Restructured Canwest for \$2.0 Billion," May 3, 2010.

39. Given Shaw's past statements about broadcasters' general lack of commitment to Canadian programming, the CMPA is excited and hopeful of the prospect of Shaw taking a different approach to Canadian broadcasting.
40. For example, in its final written comments submitted as part of the CRTC's recent policy proceeding to consider a group-based approach to the licensing of television services (*Broadcasting Notice of Consultation 2009-411* or "BNC 2009-411") Shaw wrote the following:

Clearly, private broadcasters consider local and Canadian programming obligations as nothing more than regulatory burdens from which they want Commission relief. They are threatening to close local stations because they want someone else (Canadian consumers and BDUs) to be financially responsible for fulfilling *their* obligations under the Act... There is absolutely no justification for rewarding broadcasters – who have demonstrated contempt for Canadian content and consumers – with a new compensation regime that will just go to Hollywood or their bottom lines.³ [emphasis original]

41. Moreover, in its written comments filed pursuant to *Broadcasting Notice of Consultation CRTC 2009-614 – Call for comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals* ("BNC 2009-614"), Shaw wrote the following:

[Broadcasters] want to perpetuate a model that allows them to rely on subsidies to pay for all their Canadian content obligations. At the same time, they are constantly increasing spending on US programming. The entire broadcasting sector is suffering because of irrational competitive practices to maximize audience share by acquiring the top US shows at any cost.⁴

...

More subsidies will only perpetuate [broadcasters'] lack of spending discipline and reward uneconomic behaviour. Broadcasters repeatedly excuse their spending on US programming as being necessary to subsidize their spending on Canadian programming. If this is true, then why do broadcasters continue to ask for more and more subsidies and fewer and fewer Canadian content obligations? And, at what point will broadcasters consider – or be forced to recognize – Canadian content as part of their business model – rather than a regulatory burden that should be paid for by others?⁵

³ Shaw Communications final comments filed pursuant to *Broadcasting Notice of Consultation CRTC 2009-411 – Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*, December 14, 2009, at paragraph 13.

⁴ Shaw Communications initial comments filed pursuant to *Broadcasting Notice of Consultation CRTC 2009-614 – Call for comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals*, November 2, 2009, at paragraph 8.

⁵ *Ibid.*, paragraph 58.

42. The CMPA completely agrees with Shaw's comments excerpted above and looks forward to it implementing a new business model for Canwest that relies less on U.S. programming and more on making Canadian programming its number one priority. The Association is cautiously optimistic that, given the privilege of being granted high levels of common ownership of television broadcasting services, Shaw will, going forward, put its emphasis on working with independent producers to develop, produce, and promote high-quality Canadian content for multiple platforms.
43. Canadian independent producers are eager to develop a strong and equitable partnership with Shaw to develop and produce compelling content for multiple platforms that Canadians want to watch.

Assessing the Impact of Further Consolidation on the Canadian Broadcasting System

44. Over the years, Canadian broadcasters have stated that consolidation in the television broadcasting market is a necessary means by which to re-aggregate audiences in an increasingly fragmented market.
45. The CMPA recognizes the powerful global trend towards consolidation in the broadcasting and media business. With each broadcasting transaction in recent years, we have stated that we are not opposed to consolidation in the broadcasting sector, within limits, and provided sufficient safeguards are put in place to mitigate concerns about gate-keeping, undue preference, or other anti-competitive practices potentially associated with increases in vertical or horizontal integration.
46. With respect to the Shaw-Canwest transaction, we are supportive, in principle, of Canwest's broadcasting assets being transferred to Shaw. The Shaw organization has made significant contributions to the Canadian broadcasting system over the years, not only through its ownership and operation of broadcasting distribution undertakings (BDUs) and broadcasting services, but also by helping to fund high-quality Canadian programming through such initiatives as the Shaw Rocket Fund.
47. Notwithstanding the above comments, the CMPA notes that in its 1999 Television Policy, the Commission stated its view that, while vertical integration can lead to benefits, such as cost savings and increased efficiencies, it nevertheless determined that the potential for preferential treatment exists.
48. More recently, in its Diversity of Voices regulatory policy released in January 2008, the Commission stated that increased consolidation in the television sector as a whole could "result in increased difficulties for independent producers in negotiating reasonable terms for their programming."⁶ The Commission added that while it recognizes that strong companies are

⁶ *Broadcasting Public Notice CRTC 2008-4*, Regulatory policy – Diversity of voices, January 15, 2008, at paragraph 77.

necessary to ensure that the objectives of the *Broadcasting Act* are met, “it must balance this against the negative consequences for independent producers and the impact on diversity of programming that excessive market power could bring.”⁷

Diversity of Voices

49. Following approval of the transaction, there will be one less corporate group in the Canadian broadcasting system. Shaw [and its corporate affiliates, particularly Corus Entertainment Inc. (“Corus”)] will control more licensed broadcasting services than any other entity when one includes the Canwest, Corus, and Shaw services (e.g., VOD, pay-per-view). Without question, and by various metrics, this transaction will result in a reduction of diversity of voices in the Canadian broadcasting system.
50. In terms of revenues, following the transaction Shaw and its affiliates will control 26% of commercial television revenues, just 3% behind the current leader CTVglobemedia Inc. (“CTVgm”) at 29%. This is more than double the market share of any other broadcast group.⁸
51. In terms of number of licensed pay and specialty television services in operation, following the transaction two corporate groups (Shaw and its affiliates, and CTVgm) will collectively control more than half (55%) and own at least some economic interest in almost two-thirds (61%) of the English-language specialty/pay services in operation. An analysis of the ownership of English-language specialty/pay television services among Canadian English-language private television broadcast groups conducted by the CMPA can be found in “Appendix B” to this intervention.
52. The CMPA further notes that a number of services owned by Canwest and Corus are lifestyle channels targeted at women, which currently compete against each other for subscribers, audience, and revenues.⁹ These channels offer a significant amount of interior decorating/design, home renovation, gardening, etc. shows in direct competition with one another. This can be seen by reviewing the broadcast schedules of the respective channels on their websites. Many of these shows are broadcast across many of the channels owned by the respective broadcast group, thereby limiting shelf space for original Canadian productions (each repeat takes up a valuable broadcast slot for a new Canadian show).
53. In terms of audience share, following the transaction Shaw and its affiliates will have more than one-third of the audience share in the English-language market.
54. In its Diversity of Voices regulatory policy, the Commission stated that, as a general rule, it will not approve applications for a change in effective control that would result in the control, by one person, of a dominant position in the delivery of television services to Canadians that

⁷ *Ibid.*, at paragraph 85.

⁸ CRTC *Communications Monitoring Report*, July 2010, Section 4.1, Figure 4.1.2.

⁹ These services include Canwest’s HGTV, Slice, Food Network Canada (in which Corus also holds a minority interest), diy network, and Corus’ W Network, W Movies, VIVA, and Cosmo TV.

would impact the diversity of programming available to television audiences. Of particular relevance to the Shaw–Canwest transaction, the Commission specifically noted that it will:

- **carefully examine transactions that would result in the control by one person of between 35% and 45% of the total television audience share – including audiences to both discretionary and OTA services; and**
- **barring other policy concerns, the Commission will process expeditiously transactions that would result in the control by one person of less than 35% of the total television audience share – including audiences to both discretionary and OTA services.**¹⁰ [emphasis original]

55. Our internal analysis of national BBM data suggests that taken together, the Canwest and Corus broadcasting services (including those in which they have a 50% ownership interest) had close to a 35% audience share nationally in the 2008–2009 broadcast year. However, in Western Canada, where Shaw has a dominate position with respect to the provision of broadcasting distribution services, Canwest and Corus' audience share was higher than 35%.
56. Moreover, while final and complete 2009–2010 broadcast year audience data are not yet available, it is reasonable to expect that Canwest and Corus' audience share numbers will be slightly higher than 2008–2009 given Corus' acquisition and subsequent rebranding and repositioning of SexTV and Drive-In Classics into W Movies and Sundance Channel and other potential organic audience growth. Accordingly, we urge the Commission to take a close look at the 2009–2010 audience data once they become available and leading up to the public hearing.
57. Finally, given the very real policy concerns we raise in this intervention regarding the enormous market power that Shaw will yield following approval of the transaction, the CMPA submits that the Commission should carefully examine the transaction with its Diversity of Voices policy in mind, given that Shaw's control of audience share would be very close to the 35% level nationally.

Market Power

58. The CMPA submits that the CRTC's concerns about the potential for vertically integrated companies to engage in preferential treatment continue to exist and, in fact, are even greater in an environment with ever more powerful broadcasting groups, especially those that control programming undertakings, production companies, and distribution undertakings, or any combination of these. We believe that the potential and indeed economic and business pressure for these companies to engage in anti-competitive behaviour and preferential treatment with respect to the acquisition of rights for content, for example, is significant.

¹⁰ *Broadcasting Public Notice CRTC 2008–4*, Regulatory policy – Diversity of voices, January 15, 2008, at paragraph 87.

59. Accordingly, given the significant level of ownership concentration that exists in the Canadian television broadcasting market in general, and in particular given the enormous power that Shaw will have in the market following approval of the Application, the CMPA strongly urges the Commission to ensure that Shaw commits to meaningful safeguards to ensure “fair play” in their dealings with independent producers.
60. Many of our concerns arise from the nature of the potential relationship between a Shaw-owned Canwest and Corus. We note that in the Application, Shaw states that while Shaw and Corus are “affiliates” under corporate law, Corus, which owns and operates a few small OTA television stations and numerous pay and specialty services, is an independently operated company, with Shaw and Corus having distinct and independent boards of directors and management teams. The Application further states that a restructured Canwest will also be operated under separate management and a separate board.
61. The CMPA appreciates Shaw’s assurances that a Shaw-owned Canwest and Corus will be operated as distinct and separate entities post-restructuring. We would nevertheless submit that it is critical that the Commission take the appropriate regulatory steps to ensure that the programming services between these two broadcasting groups remain truly operationally separate, and fully competitive, with each other (this is of particular concern with respect to the programming services in each broadcast group whose nature of service is lifestyle programming targeted at women). One such step would be to require that each broadcast group operate separate programming departments (separate broadcast executives with decision-making power) and separate legal/business affairs departments.
62. A related concern is the potential for a programming service in one broadcast group acquiring rights to an independently produced program for the benefit of both broadcast groups, whether directly or by securing sublicensing rights from the independent producer.¹¹ For reasons of preserving competition, both of these rights licensing arrangements should be prohibited by the Commission **by condition of licence**.
63. We also firmly believe that, beginning with this transaction and as a matter of urgency, the Commission must begin to recalibrate the significant imbalance of power that exists in the relationship between the largest Canadian television broadcasting groups and the independent production sector.
64. As Canadian broadcasting licensees continue to consolidate, the CMPA is deeply concerned about the potential for an even greater imbalance when individual independent producers are negotiating program licensing contracts with powerful, vertically integrated broadcasting groups.

¹¹ Sublicensing occurs when a broadcaster is granted the right to sublicense the rights that it has acquired to other programming services within its own broadcast corporate group, or, in more extreme cases, to sublicense the rights to any other broadcaster.

65. Given Shaw's public statements that the ability to "own" or "control" content is the primary driver for the acquisition, the CMPA is naturally concerned about the possible bundling of Internet, mobile, and VOD rights with broadcast rights, particularly since Shaw has multiple exhibition and distribution platforms.
66. Our concerns are not misplaced. The following comments made by Shaw in the May 3, 2010 conference call with financial analysts noted previously naturally raise anxiety levels among independent producers and are thus worth noting:

The number one driving force for us in this strategic acquisition has been this notion of content. Over the next decade, to be successful as a distributor over many platforms we will require strong content capacity.

– Shaw President Peter Bissonnette

Some have suggested that in the past convergence was never successful. This is not about convergence, this is about multiple platforms.

– Shaw President Peter Bissonnette

...If you own 100% of the enterprise or whatever the specific content play is, you are going to be in a much stronger position to determine how the economics are shared. It's essential when you are going to the table to actually buy these rights that you have got a clear view of what you want to do with them. And owning the entire enterprise gives us really that ability to actually do that.

– Michael D'Avella, Shaw Senior VP, Planning¹²

67. There can be no doubt that following completion of the transaction, Shaw will be a highly horizontally and vertically integrated company that controls multiple broadcasting assets and distribution platforms. While independent producers fully recognize the need for all broadcasters to offer content to audiences on multiple platforms, it is critical that the associated rights be exploited in a manner that is fair and equitable to both broadcasters and independent producers.
68. Accordingly, we urge the CRTC to ensure that proper safeguards, particularly the ones suggested in this intervention, are put in place as conditions of approval of this transaction to prevent anti-competitive behaviour or undue preference on the part of Shaw with respect to its dealings with independent producers.

¹² Edited Brief by Thomson StreetEvents of the May 3, 2010 Shaw conference call with financial analysts to discuss the Canwest transaction (available for purchase at www.streetevents.com).

The Need for Safeguards

69. Whatever its benefits, broadcaster consolidation has had significant negative consequences for the independent production sector. It has led to relentless and continuing erosion in the ability of independent producers to either retain, or receive equitable compensation for, the rights to their programming. It has resulted in even Canada's largest and most successful production companies being forced to agree to untenable licensing terms for their programs – a trend that threatens the long-term viability of their businesses and of the independent production sector as a whole.
70. The CMPA notes that independent producers are not the only stakeholders who are negatively impacted by the market imbalance created by broadcaster consolidation. When a broadcaster acquires rights to a program on inequitable terms and/or obtains profit participation for those rights that it allows the independent producer to retain, the ability of all other investors in the project to recoup their investment diminishes, or evaporates altogether. When such an outcome becomes standard business practice, it has a destabilizing effect on the entire system and potentially jeopardizes critical sources of financing for Canadian programming, particularly for the harder to finance genres of drama, documentary, and children's/youth programming.
71. The CMPA notes that a group of key funders of Canadian programming from across the country, including both the Association of Provincial Funding Agencies¹³ and a number of independent production funds¹⁴ (collectively, "the Funds"), has recently adopted a set of principles ("the Principles", attached as Appendix "C") that attempt to establish more equitable parameters for rights exploitation and revenue sharing by all financial participants in television or interactive digital programs. Under the Principles, the Funds will only invest in a television or interactive digital program if the following two conditions are met:
- Programs must have maximum exposure on a variety of platforms for the benefit of the audience; and
 - Funders must participate fairly in the revenues generated from the distribution of the programs and their ancillary rights on various platforms throughout the world.

The Principles further provide that program licence agreements include a number of simple, straightforward safeguards that would govern the exploitation of broadcast, digital, and distribution rights.

¹³ Comprised of Alberta Film, British Columbia Film, Film Nova Scotia, Manitoba Film and Music, New Brunswick Arts and Development Branch, Newfoundland and Labrador Film Development Corporation, and the Ontario Media Development Corporation) as well as the Bell Broadcast and New Media Fund, the Cogeco Program Development Fund, the Independent Production Fund, and the Shaw Rocket Fund.

¹⁴ Namely the Bell Broadcast and New Media Fund, the Cogeco Program Development Fund, the Independent Production Fund, and the Shaw Rocket Fund.

72. The CMPA notes that the Principles do not constitute Terms of Trade in that that they have been adopted by the Funds to further their own respective mandates, rather than to protect the interests of independent producers. Nevertheless, we submit that many of the Principles (subject to appropriate adjustments, where required) form the foundation for any Terms of Trade agreement, including the following:

- Canadian broadcasters can only acquire Canadian rights.
- The licence fee paid for the Canadian broadcast right must be clearly separate from any amounts paid for any other rights being acquired by the broadcaster, including the rights to the interactive content and distribution rights, if any.
- The licence agreement cannot:
 - o restrict the producer's ability to exploit any non-Canadian rights;
 - o restrict the producer's ability to exploit the digital rights in Canada that the broadcaster does not license or acquire; or
 - o include co-terminous rights (see explanatory footnote below).¹⁵
- Broadcasters' revenue participation is limited to 50% of gross revenues of the project (minus reasonable expenses) with respect to the following digital rights:
 - o Paid Internet broadcast/distribution;
 - o Paid mobile/wireless distribution (not through the Internet); and
 - o Electronic sell through and/or electronic rental (e.g., iTunes, broadcaster websites, etc.)
- Digital rights are also subject to a "use it or lose it" provision whereby a broadcaster that acquires any of these rights on an exclusive basis must exploit those rights within six months following the first air date of the program (if a series, from the first air date of the first episode) or such rights will then become non-exclusive to the producer.

¹⁵ A co-terminus right enables a broadcaster to extend, without paying additional compensation to the producer, the length of the licence term of a season of a program to correspond to the end of the licence term of a subsequent season or seasons ordered by that broadcaster for the program. This can have the effect of extending the licence terms of earlier seasons of a program for several additional years. A typical example would be where a broadcaster commissions Season 1 of a program for a licence term of seven years, and the following year orders Season 2 of a program, also for a seven-year term. A co-terminus clause would result in the licence term of Season 1 being extended an additional year (eight years rather than seven), so that it corresponds with the end of the licence term of Season 2, with no additional compensation for the producer. In this scenario, should the program run for a total of five seasons, the original seven year licence term of Season 1 would become a 12 year term.

73. The CMPA further notes that for the first time, the *Performance Envelope Program Guidelines 2010-2011*¹⁶ (“Guidelines”) of the Canada Media Fund (CMF) now require, for those television programs in which the CMF makes an equity investment, that the digital rights acquired by a Canadian broadcaster be subject to the CMF’s standard recoupment policy or a 50/50 gross revenue share between the broadcaster and the independent producer. The Guidelines also impose a 12-month “use it or lose it” requirement on the broadcaster with respect to the exploitation of digital rights, as well as a 12-month limit on broadcaster holdbacks (whereby a broadcaster requires that a producer “hold back” from exploiting a given right for a prescribed period so as to protect the value of the rights obtained by the broadcaster).
74. The CMPA notes that both the Principles adopted by the Funds and the CMF’s new Guidelines, while representing an important step forward in establishing a rights exploitation framework that works more effectively for all financial participants in the production of a program, only apply to programs in which the Funds or the CMF make an equity investment. They, therefore, do not apply to a large number, if not the majority, of programs produced in a given year.
75. Concluding enforceable Terms of Trade agreements that would apply across the independent production sector thus remains an urgent necessity.

Shaw and Terms of Trade

76. As the CMPA has stated in numerous CRTC proceedings in recent years, concerns regarding high levels of horizontal or vertical integration can be addressed through effective Terms of Trade agreements that establish a fair and transparent framework for the negotiation of licensing agreements between broadcasters and independent producers and with some accountability to the Commission. This is critical in an era of consolidation in which large corporate broadcast and multimedia groups control both conventional and specialty television channels, various distribution platforms, and have aggressive multi-platform distribution strategies, as Shaw does.
77. Canadian independent producers are convinced that establishing workable Terms of Trade with our broadcast partners is a light-handed way of rebalancing the relationship between the market power of broadcasting licensees and the independent production sector. Terms of Trade are an industry-crafted vehicle for maximizing the exploitation of programming rights across multiple platforms in a manner that both harnesses the benefits of, and mitigates the market imbalances resulting from, an increasingly consolidated broadcasting system.
78. The CMPA notes that the Commission has also recognized the importance of Terms of Trade in a more consolidated broadcasting system. In its Diversity of Voices regulatory policy, the Commission stated that when analyzing applications for change in effective control of

¹⁶ Specifically, section 3.2.TV.5.3 of the Guidelines, available at <http://www.cmf-fmc.ca/downloads/create/Performance.pdf>.

broadcasting undertakings, it would give due consideration to “the existence of effective terms of trade agreements between licensees and independent producers.”¹⁷

79. It is of deep concern to the CMPA that, notwithstanding this clear statement by the Commission, Shaw has not, in any of its public filings with the Commission for this proceeding to date, made any reference – let alone a commitment – to negotiating Terms of Trade with the CMPA. We regard Shaw’s silence as a missed opportunity to demonstrate its willingness to forge a renewed partnership with the independent production sector – to work together to develop and produce compelling content for Canadians for distribution on multiple platforms.
80. The CMPA urges the Commission to ask Shaw at the upcoming public hearing what specific commitments it is willing to make to conclude Terms of Trade with the CMPA. We respectfully submit that the independent production sector will not remain viable based on the expression of mere good intentions by Shaw to negotiate Terms of Trade. In addition, for the reasons outlined below, we are strongly of the view that a commitment by Shaw to conclude Terms of Trade by licence renewals is too long a timeframe.

The Time for Terms of Trade is Now

81. The CMPA recognizes that to date, the deadline for all of the private broadcast groups to conclude Terms of Trade agreements with the CMPA has been the upcoming licence renewal hearings. However, for a variety of reasons, these hearings have been pushed back by over two years, and throughout that time, broadcasters have escalated their demands to the point that producers risk becoming “independent” in name only.
82. Through the deals that they are imposing on independent producers, it is becoming increasingly clear that Canadian broadcasters are attempting to replicate a U.S.-style “studio system”, whereby they exploit all of the rights to a program around the world. Unlike the U.S. studios, however, Canadian broadcasters do not come close to paying for all of the costs of production.
83. Simply put, the daily, relentless erosion of rights has placed the independent production sector on the precipice. This trend runs directly contrary to the broadcasting policy for Canada, and its requirement, under section 3 (i)(v) of the *Broadcasting Act*, that the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector. It also has perilous consequences for programming diversity and raises serious questions about whether there will soon be room in the Canadian broadcasting system for the expression of original, independent voices from all regions of the country.

¹⁷ *Broadcasting Public Notice CRTC 2008-4*, Regulatory policy – Diversity of voices, January 15, 2008, at paragraph 89.

84. It is for these reasons that the CMPA has requested that the Governor in Council issue a policy direction to the CRTC, pursuant to section 7 of the *Broadcasting Act*, requiring the Commission, in its consideration of applications for broadcasting licences, licence renewals, or changes in ownership, to assess whether the applicant has taken the appropriate steps to reach an equitable arrangement with the independent production sector regarding the ownership and exploitation of program rights.¹⁸
85. With respect to the Shaw transaction specifically, as the CMPA has indicated above, we are confident that Shaw's acquisition of Canwest will have many positive benefits for the Canadian broadcasting system. We are hopeful that Shaw will make Canadian content an integral component of its broadcasting business model. But it is equally clear that an independent producer who attempts to negotiate with such a giant vertically and horizontally integrated entity will be at an enormous – if not insurmountable – bargaining disadvantage. The need for immediate safeguards is as pressing as it is obvious.
86. Given Shaw's silence to date on Terms of Trade, and in light of the fact that independent producers are already faced with a massive – and unsustainable – imbalance in negotiating power with the currently constituted Canwest, let alone a horizontally and vertically integrated Shaw/Canwest, the CMPA respectfully submits that Shaw should be required, by condition of licence, to conclude a Terms of Trade agreement with the CMPA as a condition of the Commission granting regulatory approval for this transaction. Specifically, the CMPA proposes that the Commission require Shaw to enter into good-faith negotiations with the CMPA to conclude a Terms of Trade agreement within sixty days of the Commission's decision granting conditional regulatory approval of the transaction.
87. The CMPA is prepared to do its part to move Terms of Trade negotiations forward. When negotiations resume, we will table a simplified proposal that attempts to meaningfully address concerns that were expressed both by the Commission at the hearing for the group-based licensing policy proceeding of last year and by CTVgm, Canwest, and Rogers Communications Inc. ("Rogers") at the Terms of Trade negotiating table.
88. The CMPA notes that the Commission has indicated that it does not intend to mediate Terms of Trade negotiations at this time. We agree with this approach. We have always been strongly of the view that, where possible, it is preferable that Terms of Trade be crafted by the parties concerned.

¹⁸ The CMPA made this request in its written submission to the Government of Canada in response to its Consultation Paper on a Digital Economy Strategy entitled *Improving Canada's Digital Advantage – Strategies for Sustainable Prosperity*, dated July 13, 2010, at paragraph 33, available at:

http://www.cftpa.ca/government_relations/pdfs/CFTPA_Submission_Re_National_Digital_Economy_Strategy_Consultation.pdf.

89. However, in order to facilitate the conclusion of an agreement between Shaw and the CMPA within the suggested sixty-day timeframe, and without precluding any additional steps the Commission may decide to take at a later date, the CMPA proposes that a member of the Commission's Alternative Dispute Resolution department attend the negotiations as an observer only. We are confident that the presence of Commission staff will help to discipline the negotiations and provide an incentive for both parties to reach an agreement efficiently and expeditiously.

Value of the Transaction

90. In reviewing television ownership transactions over the years, the CRTC has conducted detailed and thorough analyses of the value of transactions for the purpose of assessing the appropriate quantum of tangible public benefits. The extensive due diligence has often resulted in determinations of higher valuations than those proposed by the applicants, resulting in a higher level of public benefits for the benefit of the Canadian broadcasting system as a whole.
91. The CMPA is confident that the CRTC will conduct a thorough and fair analysis of the value of the Shaw-Canwest transaction for the purpose of assessing tangible benefits. In particular, we expect the Commission to continue its longstanding practice of including the value of conditional future payments, operating lease commitments, and assumed debt and liabilities in the value of transactions for the purpose of assessing the appropriate quantum of benefits in this transaction.
92. The CMPA strongly disagrees with the arguments put forward by Shaw in support of its valuation of \$506 million for this transaction. As noted briefly above, we respectfully disagree with Shaw that Canwest's "financial distress" and the intangible benefits of the transaction noted by Shaw outweigh the requirement to pay sufficient tangible benefits in this transaction.
93. The CMPA worked together with our union and guild partners (ACTRA, the Directors Guild of Canada, and the Writers Guild of Canada) to undertake a detailed analysis of Shaw's arguments relating to "financial distress" and the "value of the transaction" (the "Joint Report"). The Joint Report is included as part of this intervention as "Appendix D".
94. We respectfully submit that the analysis should lead the Commission to conclude that the true value of the Shaw-Canwest transaction is at least \$2.005 billion. In addition to the analysis contained in the Joint Report, the CMPA wishes to make the following additional comments with respect to Shaw's arguments that "financial distress" and the intangible benefits of the transaction, as put forward by Shaw, justify an exception to, or flexibility from, applying the Commission's longstanding tangible benefits policy in the current case.

The Financial Distress Argument

95. With respect to the financial distress argument, Shaw argues that Canwest will continue to face financial challenges following its emergence from CCAA protection. For example, it states the following:

Canwest will also continue to face financial difficulties following implementation of the Plan of Arrangement and the merge of the restructured company, in view of the significant economic challenges governing the conventional television sector.¹⁹

96. Shaw's comments represent a revisionist analysis of the health of, and prospects for, conventional television. As noted above, Shaw has repeatedly expressed the view to the Commission in recent years that conventional TV broadcasters do not have a revenue problem, they have spending and debt problems.
97. Shaw has also argued that private broadcasters are already profitable and operationally strong based on their large stable of television services. For example, in its written comments filed pursuant to BNC 2009-614, Shaw quoted Leonard Asper, then President and CEO of Canwest, to make its point, as follows:

...Canwest had too much debt.

However, you should not confuse operational excellence with our balance sheet issues. Our underlying operations are strong and our brands continue to dominate in their markets.

...

Our creditors see the strength of our business... As I've mentioned, our television business alone generates hundreds of millions of dollars in operating profits so we have a successful business... We had a bad balance sheet. That's being fixed, the business is poised to succeed.²⁰

98. Indeed, Shaw's arguments suggesting that Canwest will remain in a precarious financial position following its emergence from CCAA protection contrast sharply with what Shaw has stated publicly to investors and the financial community. For example, in its May 3, 2010 news release announcing its acquisition of 100% of Canwest's broadcasting assets, Shaw's Senior VP and CFO Steve Wilson stated that "Canwest's broadcasting business is performing well..." On

¹⁹ Shaw Communications letter to the CRTC dated May 11, 2010 in response to a CRTC deficiency letter dated May 14, 2010, at page 18.

²⁰ Shaw Communications initial comments filed pursuant to *Broadcasting Notice of Consultation CRTC 2009-614* – Call for comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals, November 2, 2009, at paragraph 64 and 65.

the same day, he told financial analysts on a conference call to discuss the transaction that the Canwest assets formerly owned by Alliance Atlantis Communications “generate margins in excess of 40%.”²¹

99. Finally, Shaw CEO and Vice-Chair Jim Shaw stated on the conference call that “...this transaction will prove out to be really, really successful for shareholders and everybody else at Shaw.”²²
100. Shaw has also noted that Canwest will have a much improved balance sheet and no debt – arguably the single biggest reason for its financial challenges in recent years – once it emerges from CCAA protection.
101. Given all of the above, the CMPA finds it difficult to accept the suggestion that, because Canwest is currently in CCAA protection, this should warrant a lower valuation or an exception or flexibility related to the payment of tangible benefits. The fact is, Canwest will be in a much stronger financial position when it emerges from CCAA protection, as Shaw itself has indicated to the financial community.
102. The CMPA also notes that, in a deficiency letter to Shaw dated May 14, 2010, the Commission noted that according to its data, overall Canwest’s broadcasting services have a positive pre-tax margin and even when disaggregated into the Canwest Television Limited Partnership (“CTLP”) conventional TV, CTLP specialty TV, and CW Media specialty TV (the former Alliance Atlantis services) groups, each of these groups shows a positive pre-tax profit.
103. It is also worth noting that, in its recent decision approving ZoomerMedia Limited’s (“ZoomerMedia”) acquisition of the broadcasting assets of S-VOX, the Commission expressed the view that “a purchaser acquires assets for the expected future profits and not past results, and that the valuation should reflect that reality, including expected synergies and the prospect of economic recovery.”²³
104. In this regard, the Commission should take into account the optimistic comments made by Shaw to the financial community about the expected benefits and synergies that the transaction will bring with it.
105. The CMPA also urges the Commission to be mindful of the improving global and Canadian advertising markets and the better overall economic environment in international and Canadian broadcasting when assessing Shaw’s claims that Canwest will still be on shaky ground financially following approval of the transaction.

²¹ Edited Brief by Thomson StreetEvents of the May 3, 2010 Shaw conference call with financial analysts to discuss the Canwest transaction (available for purchase at www.streetevents.com).

²² Sturgeon, Jamie. “Shaw bets big on content in Canwest deal,” *National Post*, May 3, 2010.

²³ *Broadcasting Decision CRTC 2010-193*, March 30, 2010, at paragraph 16.

106. Globally, for example, Informa Telecoms & Media predicts net TV advertising to grow by 3.7% in 2010 from the previous year.²⁴ In the U.S., CBS' local television stations saw revenues increase 31% to \$337.9 million in CBS Corporation's fiscal 2010 second quarter ended June 30, 2010 from the same period last year "due to the improved advertising marketplace across many key categories."²⁵
107. The economic environment appears to be equally buoyant for Canadian broadcasters. According to one news report, Canadian conventional TV networks were asking media buyers for upwards of 10% increases in ad pricing in the recent "upfront" sales process. When asked to comment on this year's negotiating environment, CTV's Executive Vice-President of Sales and Marketing, offered the following comment: "The upfront market for conventional TV is buoyant, and specialty has been strong as well, with inventory moving earlier and faster than last year."²⁶
108. Moreover, Group M, a division of WPP, predicts that TV's share of the Canadian advertising market will grow to 27.8% in 2010 from 27.1% in 2009.
109. Indeed, all evidence suggests 2010 is shaping up to be a good rebound year for Canadian broadcasters. For example, the Commission should consider the following:
- Canwest reported increased revenue and operating profit for its television operations for its fiscal third quarter ended May 31, 2010. Excluding results from the company's discontinued E! network from the previous year, revenue was up 14% and operating profit increased 39% to \$101 million in this year's quarter compared to the same period last year.²⁷
 - CTVgm shareholder Torstar Corporation recently highlighted improved financial results reflecting higher revenues and EDITDA for CTVgm in reporting its fiscal second quarter financial results ended June 30, 2010.²⁸
 - In reporting its fiscal second quarter financial results ended June 30, 2010, Rogers noted that its Media division saw an increase in revenue, reflecting improvements in prime-time TV ratings, increased subscriber fees, a better advertising market, and an increase in consumer discretionary spending.²⁹

²⁴ Global TV Advertising Forecasts – Extract, Informa Telecoms & Media, www.informatm.com/gntv.

²⁵ CBS Corporation news release, "CBS Corporation Reports Second Quarter 2010 Results," August 3, 2010.

²⁶ Bailey, Katie. "2010 upfronts 'fast and furious,' buyers say," [Media in Canada](http://www.mediaincanada.com). June 28, 2010.

²⁷ Canwest news release, "Canwest Global Communications Corp. Reports Third Quarter 2010 Results," July 15, 2010.

²⁸ Torstar Corporation Interim Management's Discussion and Analysis for the three and six months ended June 30, 2010 and 2009, July 27, 2010.

²⁹ Rogers news release, "Rogers Reports Second Quarter 2010 Financial and Operating Results," July 27, 2010.

- Corus' Television segment saw revenue increase by 13% in the company's fiscal third quarter ended May 31, 2010, reflecting a 13% increase in subscriber revenues and "a return to strong growth in advertising revenues with an increase of 11%." Segment profit increased by 17% in Q3 and 11% year-to-date.³⁰
- Astral Media's Television division saw advertising revenue increase by 17% in the company's fiscal third quarter ended May 31, 2010 compared to the same quarter the previous year.³¹

110. The CMPA, therefore, urges the Commission to take into account the increasing evidence that the advertising market is rebounding and the overall economic situation is improving in the broadcasting industry when assessing Shaw's claims that Canwest's financial position will remain delicate following approval of the transaction.
111. For all of the reasons contained in the Joint Report (Appendix D) and above, the CMPA respectfully urges the Commission to reject Shaw's arguments related to Canwest's so-called "financial distress" as a rationale to lower the value of the transaction and reduce the quantum of tangible benefits payable.

The Intangible Benefits Argument

112. We will now address Shaw's arguments that the intangible benefits of the transaction merit an exception to the normal application of the Commission's tangible benefits policy.

Shaw's argument that the transaction ensures that Canwest emerges from CCAA protection quickly is hypothetical

113. First, Shaw argues that this transaction ensures that Canwest emerges expeditiously from CCAA protection, which it claims has strained morale, made employee retention difficult, threatened to destabilize Canwest's relationships with its suppliers and customers, and challenged Canwest's ability to make forward-looking investments necessary to maintaining its competitiveness.
114. While the CMPA does not dispute the importance of Canwest emerging from CCAA protection as soon as possible, we do not accept the argument that Shaw could have been the only company to play the role of so-called "white knight". Shaw suggests in several filings on the public file of this proceeding that it was the only company willing to step up to the plate and make a formal bid for all of Canwest's broadcasting assets.
115. The CMPA respectfully submits that this argument must be assessed in light of the fact that Shaw was ultimately able to obtain control over 100% of Canwest's assets through a court-mediated negotiation, rather than by having to bid through an open-auction process.

³⁰ Corus Entertainment Third Quarter 2010 Report to Shareholders For the Three and Nine Months Ended May 31, 2010 (Unaudited), July 14, 2010.

³¹ Astral Media Third-Quarter Report to Shareholders, July 15, 2010.

Shaw's argument that the transaction preserves the Canwest/Alliance Atlantis benefits is inconsistent with CRTC policy

116. The CMPA finds Shaw's characterization of "preserving the benefits of the Canwest–Alliance Atlantis transaction" as an intangible benefit of the current transaction to be entirely inconsistent with the Commission's longstanding policy that requires acquirers of broadcasting assets to assume any outstanding benefits commitments over and above new benefits. The Commission's policy is unequivocal, expressed as follows:

The Commission currently expects the purchaser of an undertaking to fulfil any benefits commitments that the current licensee of the undertaking has not fulfilled. The Commission considers that benefits commitments are part of the obligations of a licensee and should be implemented regardless of ownership changes. **The Commission will therefore maintain its practice of questioning the prospective purchaser in a transaction on its intentions with respect to the seller's unfulfilled benefits commitments. The Commission notes that commitments to carry out such unfulfilled benefits are not considered to be benefits on the part of the purchaser.**³² [emphasis original]

117. This policy has been reiterated over the years in many ownership transaction decisions, most recently in the Commission's decision approving ZoomerMedia's acquisition of the broadcasting assets of S–VOX.³³
118. Even if Canwest's assets had been broken up and auctioned off in pieces if the Shaw deal had not emerged – an unreasonable assumption given that it is likely that there would have been other bidders had it been known that 100% control of the assets was available for auction – under the CRTC's longstanding benefits policy, acquiring parties would have had to assume a proportionate amount of the outstanding benefits commitments based on the assets being acquired.

The presence of intangible benefits is not a substitute for appropriate tangible benefits

119. Finally, the CMPA submits that the other intangible benefits of the transaction advanced by Shaw could easily have applied to another bidder. In any event, in our view the intangible benefits cited by Shaw are insufficient to warrant an exception or flexibility with respect to application of the Commission's tangible benefits policy.
120. The CMPA, therefore, urges the Commission to reject Shaw's argument that the intangible benefits of the transaction it has cited are sufficient to warrant an exception to the normal application of the Commission's tangible benefits policy.

³² *Public Notice CRTC 1993–68*, Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings, May 26, 1993.

³³ *Broadcasting Decision CRTC 2010–193*, March 30, 2010, at paragraph 20.

The Proposed Tangible Public Benefits

121. The CMPA respectfully submits that, given our submission that the true value of the Shaw–Canwest transaction is at least \$2.005 billion, the revised tangible benefits proposal totalling \$108 million put forward by Shaw in its letter to the CRTC dated July 12, 2010 is significantly insufficient in terms of quantum. As per CRTC policy, benefits should be payable totalling no less than 10% of the value of the transaction.
122. In addition, Shaw’s revised tangible benefits proposal fails to comply with the Commission’s longstanding benefits policy in several respects, as follows:
 - First, an insufficient quantum of the proposed benefits dollars will go to “on-screen” programming initiatives;
 - Second, certain proposed benefits are self-serving corporately for Shaw and Canwest and are the cost of doing business. In other words, they will not benefit the broadcasting system as a whole; and
 - Third, an insufficient quantum of the proposed programming-related benefits will flow to third parties, such as independent producers.
123. The CMPA addresses these issues in greater detail below.
124. Three main policy statements set out what the CRTC expects in regards to tangible benefits in ownership transactions involving a change of ownership or control of television undertakings.³⁴ They state that because the CRTC does not solicit competing applications and because just one proposal is put forward, the onus is on the applicant to prove that its plan is the best possible proposal “in the public interest”.
125. Among other things, the applicant is required to propose a package of “significant and unequivocal benefits” that will result in measurable improvements to the communities served by the undertaking(s) and to the Canadian broadcasting system as a whole.
126. The tangible benefits policy furthers the diversity of voices in the Canadian broadcasting system by requiring that a majority of television benefits flow to third parties, such as independent producers. As such, the policy has become the “lifeblood” for Canadian programming and the independent production sector.

³⁴ See *Public Notice CRTC 1989–109*, ELEMENTS ASSESSED BY THE COMMISSION IN CONSIDERING APPLICATIONS FOR THE TRANSFER OF OWNERSHIP OR CONTROL OF BROADCASTING UNDERTAKINGS, September 28, 1989; *Public Notice CRTC 1993–68*, Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings, May 26, 1993; *Public Notice CRTC 1999–97*, BUILDING ON SUCCESS – A POLICY FRAMEWORK FOR CANADIAN TELEVISION, June 11, 1999.

A Greater Proportion of Benefits Funds Must Go to New, Incremental On-Screen Programming or New Media Initiatives

127. The CMPA notes that, according to Shaw's revised tangible benefits proposal totalling \$108 million, only 79% (i.e., \$42 million for drama and related new media initiatives and \$43 million for morning news programs) of the funds are earmarked for on-screen initiatives. This is inconsistent with the Commission's benefits policy, which requires that between 85% and 90% of benefits funds flow to on-screen programming initiatives.
128. The Commission recently reaffirmed this longstanding requirement when it required ZoomerMedia to increase the ratio of on-screen to social benefits from 70%:30% to approximately 85%:15% in its acquisition of the broadcasting assets of S-VOX.
129. Accordingly, the CMPA urges the Commission to continue with its longstanding approach in the context of the Shaw-Canwest transaction and direct Shaw revise its tangible benefits proposals to conform to the CRTC's longstanding benefits policy.

The Proposed Digital Transmitter Benefit Should Not Qualify as a Tangible Benefit

130. Shaw's proposal to spend \$23 million to convert Canwest's remaining 35 non-mandatory transmitters to digital in smaller markets across Canada "as resources permit and as soon as possible" is inconsistent with the CRTC's policy to reject normal capital expenditures as tangible public benefits. The Commission's policy is as follows:

Proposed expenditures that fall within the parameters of what can be considered normal capital expenditures are also generally rejected by the Commission as benefits of a transfer... Capital expenditures for items such as replacement transmitters are also usually viewed by the Commission as being part of a normal capital expenditure program. If replacements are needed, they are required irrespective of a transfer; if they are not needed, there is no discernible benefit to the public.³⁵
131. In the CMPA's view, this proposed benefit initiative is self-serving to Shaw and Canwest and will not benefit the broadcasting system as a whole. Therefore, this initiative should not qualify as an eligible tangible benefit.
132. By Shaw's own past admission, this proposed initiative is a cost of doing business. In recent years, Shaw has repeatedly stated that the cost to upgrade analog transmitters to digital is a cost of doing business for Canadian OTA television broadcasters and should not be subsidized by BDUs or consumers. For example, in its initial comments filed pursuant to the CRTC's review of its Television Policy in 2006, Shaw stated the following:

³⁵ *Public Notice CRTC 1989-109*, Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings, September 28, 1989.

[F]ee for carriage or any other economic reward should not be linked with making the decision to broadcast in digital or offer HD programming. These are investments that broadcasters will need to incur to operate in a competitive digital world and they should not be subsidized by cable and DTH customers.³⁶

133. During its appearance at the public hearing relating to the Television Policy review in November 2006, Shaw added the following:

Yes, it will cost money to implement high definition but that is the cost of doing business...

We encourage broadcasters to make the investments they need to make.³⁷

134. More recently, in its initial written comments filed pursuant to BNC 2009-411, Shaw stated the following:

Shaw again must express its frustration that broadcasters will not invest even relatively modest amounts of capital to ensure that they can continue to reach their audiences and fulfill their responsibilities. The fact that there may be no immediate direct revenue source connected to a conversion to digital OTA transmission does not mean that the failure to convert is excusable.³⁸

135. We urge the Commission to not be dissuaded from rejecting this proposed benefit initiative as an eligible tangible benefit by Shaw's suggestion that, absent Commission approval of this benefit initiative, such investments will not be made in the ordinary course of business. In this regard, it is worth noting the following comment made by Shaw during its appearance at the public hearing relating to the Television Policy review in November 2006:

...I found it interesting Mr. Brace's comments about the costs for CTV of about \$46 million [to replace analog transmitters with digital ones]. They are willing to pay \$1.7 billion for CHUM and they don't have \$46 million to invest in going to HD?³⁹

...

³⁶ Shaw Communications initial comments filed pursuant to *Broadcasting Notice of Public Hearing CRTC 2006-5* – Review of certain aspects of the regulatory framework for over-the-air television, September 27, 2006, at paragraph 26.

³⁷ Transcript of Shaw Communications' appearance at the public hearing related to *Broadcasting Notice of Public Hearing CRTC 2006-5* – Review of certain aspects of the regulatory framework for over-the-air television, November 30, 2006, at paragraphs 6012 and 6013.

³⁸ Shaw Communications initial comments filed pursuant to *Broadcasting Notice of Consultation CRTC 2009-411* – Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television, September 14, 2009, at paragraph 68.

³⁹ Transcript of Shaw Communications' appearance at the public hearing related to *Broadcasting Notice of Public Hearing CRTC 2006-5* – Review of certain aspects of the regulatory framework for over-the-air television, November 30, 2006, at paragraph 6192.

...[E]verybody is going to have to make those kinds of investments, and they are going to have to make those kinds of investments in a competitive market.⁴⁰

136. It is perplexing that Shaw has criticized broadcasters in the past for not wanting to invest in digital transmitters, yet it is now willing to “subsidize” such investments using public benefits funds, rather than use its own operating capital. Just as Shaw questioned in 2006, one could easily observe today that if Shaw is willing to spend just over \$2 billion to buy Canwest, then surely it can spend \$23 million of its own capital funds to convert Canwest’s remaining analog transmitters to digital.
137. The CMPA is also concerned that approval of this proposed benefit initiative would provide Canwest with a competitive advantage over its OTA television competitors, including CTV and the CBC. We believe that it would be inappropriate to allow tangible benefits to be used to provide one broadcaster with a competitive edge over another.
138. Given all of the above, the CMPA urges the Commission to disqualify Shaw’s proposal to spend \$23 million to convert analog transmitters to digital as an eligible tangible benefit.

The Proposed New Morning Newscasts Benefit Will Not Benefit the System as a Whole

139. With respect to Shaw’s proposal to spend \$43 million to reintroduce/introduce local morning newscasts to several Global TV stations/markets, the CMPA questions the appropriateness of such a benefit initiative given that it would be directed to in-house production and would benefit only Canwest.
140. In its recent decision approving ZoomerMedia’s acquisition of the broadcasting assets of S-VOX, the Commission rejected ZoomerMedia’s proposal to allocate funding to Vision TV Network, the current licensee of VisionTV, for the creation of audiovisual elements called Broadband Initiative/Spiritual Shorts. In so doing, the Commission noted that it generally requires applicants to demonstrate that expenditures proposed as benefits will flow predominantly to third parties, such as independent producers. The Commission, therefore, concluded that “it was inappropriate to allocate tangible benefits to the party involved in the transaction.”⁴¹
141. We urge the Commission to follow the same approach in the context of the Shaw–Canwest transaction.
142. Notwithstanding the above comments, the CMPA recognizes that the Commission has in the past accepted similar benefits initiatives as eligible tangible benefits. However, under Shaw’s revised tangible benefits proposal, this \$43–million proposed initiative represents 40% of the total value of the proposed benefits package. In our respectful submission, this is inconsistent with the principle that tangible benefits benefit the broadcasting system as a whole.

⁴⁰ *Ibid.*, at paragraph 6194.

⁴¹ *Broadcasting Decision CRTC 2010–193*, March 30, 2010, at paragraph 26.

143. Accordingly, the CMPA would not object to some funds being directed to reintroduce/introduce local morning newscasts as proposed by Shaw, provided that no more than 25% of all benefits funds flow to such an initiative or social benefits.
144. Put another way, we urge the Commission to ensure that 75% of all tangible benefits be directed to the development and production of new, incremental programming and related new media initiatives in the categories of drama, documentary, or children's/youth.

A Greater Proportion of Benefits Funds Must Flow to Third Parties, such as Independent Producers

145. According to Shaw's revised tangible benefits proposal totalling \$108 million, it appears that only 39% of the funds will flow to third-parties, such as independent producers. This is entirely inconsistent with the Commission's benefits policy, which requires that a predominance of tangible benefits funds must flow to third parties.
146. It is also unclear from documents on the public file of this proceeding what percentage of expenditures related to the proposed Category 7 programming and new media benefits initiatives will flow to third-party independent producers.
147. In any event, the CMPA submits that, consistent with the approach taken in the Canwest–Alliance Atlantis transaction, all programming resulting from the benefits should be produced by independent/non-affiliated production companies, with the exception of the morning news initiative, should the Commission approve it.
148. We submit that it would also be appropriate to formalize this requirement into a condition of licence to provide the independent production community with a greater degree of transparency and predictability, as the Commission did in its decision approving Canwest's acquisition of Alliance Atlantis' broadcasting assets.⁴²

Other Issues

The need to ensure that all benefits are truly Incremental

149. It is not clear from the Application how Shaw intends to ensure that its proposed drama programming and related new media benefits expenditures will be truly incremental to existing programming initiatives, especially given the lack of Canadian programming expenditure (CPE) requirements for conventional television broadcasters. As such, there is a need to determine an appropriate baseline spending level to ensure the incrementality of benefits spending.
150. It is well known that broadcasters generally reduced their overall costs, including Canadian programming expenditures, to the maximum extent possible under their conditions of licence during the past couple of years during the challenging economic environment.

⁴² *Broadcasting Decision CRTC 2007-429*, Transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to Canwest MediaWorks Inc., December 20, 2007, at paragraph 87.

151. Accordingly, the CFTPA encourages the Commission to use an approach, such as a multi-year average if appropriate, that results in the establishment of a baseline for the maximum benefit of the system as a whole and one that reflects Shaw's privileged position as a large vertically integrated broadcast ownership group.

The remaining Canwest–Alliance Atlantis benefits do not qualify as 'new' benefits in this transaction

152. As stated earlier, Shaw's attempt to position the remaining benefits expenditures (approximately \$95 million) of the Canwest–Alliance Atlantis transaction as new tangible benefits of the current transaction is entirely inconsistent with the Commission's longstanding policy that requires acquirers of broadcasting assets to assume any outstanding benefits commitments over and above new benefits. The Commission's policy is indisputable and, therefore, Shaw's proposal should be denied.

Shaw's request for one year to finalize its proposed benefits initiatives

153. With respect to Shaw's request that it be given up to one year to clarify the specifics of its revised proposed tangible benefits package, the CMPA notes that this is an unusual request and, to our knowledge, without precedent.
154. Shaw's argument that it has limited access to the detailed information necessary to make fully informed decisions on specific, incremental benefits that would be beneficial to both the broadcasting system and to the recovery of Canwest is irrelevant and no different from the position other parties have been in when acquiring broadcasting assets in the past.
155. The CMPA notes that it has been Commission practice when it has rejected certain proposed benefits initiatives or required additional proposals to give broadcasters between 30 and 45 days to file such information. In our view, Shaw has failed to provide any compelling rationale as to why the Commission should depart from its traditional and longstanding approach. Therefore, we urge the Commission to deny the request.
156. Having said that, the CMPA is increasingly concerned that, when broadcasters have been given between 30 and 45 days to file revised benefits proposals in recent transactions, the process has not been open to the public. Broadcasters have submitted their revised proposals, and the Commission has either accepted or rejected them, without any opportunity for the public and industry stakeholders to comment. This practice is inconsistent with the principles of transparency and fairness.
157. Accordingly, we urge the Commission to allow the public to comment on any revised benefits proposals that may be submitted by Shaw after the public hearing that raise any policy concerns.

There is no rationale to deviate from a five- or seven-year benefits term

158. Shaw also requests the ability to implement its revised tangible benefits commitments over a ten-year period from the date of approval of the change of control, arguing that there is a need to ensure that all available resources are dedicated primarily to the objective of helping Canwest emerge from creditor protection as a strong and healthy competitor in the broadcasting market.
159. Shaw's request is entirely inconsistent with the CRTC's longstanding approach of requiring that tangible benefits be expended over the licence term of the undertakings being acquired, usually 7 years or less. This requirement was most recently upheld in the Commission's decision approving Canwest's acquisition of Alliance Atlantis' broadcasting assets. In rejecting a similar request from Canwest, the Commission specifically noted the following:

Though the Commission appreciates that the creative process is dynamic and difficult to predict, it notes that tangible benefit packages in the past have been managed successfully within the five- and seven-year periods. The Commission is not convinced that the advantages CanWest claims would result from a ten-year period are sufficient to warrant a deviation from the accepted five- or seven-year norms.⁴³

160. Accordingly, the CMPA urges the Commission to deny Shaw's request to expend tangible benefits funds over a 10-year period.

The need for safeguards in self-directed benefits packages

161. The CMPA submits that the tangible benefits policy has advanced the diversity of voices in the Canadian broadcasting system by requiring that a majority of television benefits flow to third parties, such as independent producers. However, this is diminishing in an environment where self-directed benefits have become the norm in television benefits packages, as opposed to contributing the money to a third-party, independent fund such as the Shaw Rocket Fund or an endowment. The overall impact of self-directed benefits is a move away from measurable improvements in the system as a whole. These benefits necessarily focus on only the specific genre or program format of choice of the particular broadcaster (sometimes an under-represented format and sometimes not) and the established processes and partners of choice. As a result, the recent experience has been that only a handful of independent producers have benefited from the self-directed benefit approach by virtue of the fact that the broadcaster controls which program genre or format is the focus, which projects to support, and the producers with whom to work.

⁴³ *Broadcasting Decision CRTC 2007-429*, Transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to Canwest MediaWorks Inc., December 20, 2007, paragraph 80.

162. Moreover, self-directed benefits packages have given broadcasters an increasing amount of power over producers wishing to access benefits funds with respect to licence terms. Since benefits funds provide an injection of rare incremental money into the system for the creation of Canadian programming, and producers are eager to access the funds given the limited amount of funding in the system, broadcasters are able to dictate licence terms to producers even more than usual, particularly in light of the lack of independent guidelines for many self-directed funds, beyond a level of expenditure requirement on independent production.
163. It is for this reason that, in the absence of Terms of Trade agreements between the CMPA and broadcasters, the Association has advocated for a better balance between benefits initiatives that support the Canadian broadcasting system in general (system-wide benefits such as contributions to arms-length funds or endowments) and those intended solely for the television markets in question or to benefit the applicant's own programming services (self-directed benefits).
164. The Association respectfully submits, therefore, that it is appropriate and necessary to impose specific safeguards with respect to the self-directed tangible benefits package in this transaction. The CMPA proposes that the following conditions be placed on the benefits package as a condition of approval of the transaction, some of which are already standard criteria under the general benefits policy or have been imposed in past transactions:
- Benefits expenditures must be incremental to existing and ongoing Canadian programming expenditure requirements. The Commission should ensure incrementality by condition of licence;
 - 75% of all tangible benefits expenditures should be directed to the development and production of new, incremental programming and related new media initiatives in the categories of drama, documentary, or children's/youth. All of this programming should be produced by independent producers, by condition of licence;
 - Independent productions should be encouraged from across Canada for the purpose of ensuring regional reflection;
 - Consistent with the approach taken in the BCE-CTV transaction in 2000, any and all consideration that is received by Shaw/Canwest or any related company from the sale or distribution of the incremental drama, documentary, or children's/youth programming and related new media programming to entities other than Canwest's broadcasting services, net of reasonable sales expenses actually incurred in respect of the distribution of such programs to unaffiliated companies, shall, by condition of licence, be added to the tangible benefits funds and shall be used to fund additional incremental Canadian drama, documentary, or children's/youth programs and related new media programs on the same basis. Similarly, all profits earned by Shaw/Canwest or any related company from equity investments in this incremental Canadian programming, shall, by condition

of licence, also be added to the tangible benefits funds and shall be used to fund additional incremental Canadian drama, documentary, or children's/youth programs and related new media programs on the same basis.⁴⁴

- None of the benefits monies are to be used for administrative costs;
- Annual reports – audited by an independent, third party – must be filed, detailing expenditures, incrementality, and any other information the Commission requires related to the tangible benefits package (including details of any and all consideration for the sale or distribution of, or any profits earned by Shaw/Canwest from equity investments in, programming funded through tangible benefits, as per the condition above). Benefits reports should be publicly available; and
- Benefits funds should be expended in roughly equal amounts throughout the benefits period (i.e., over 5 to 7 years).

Conclusion

165. In summary, the CMPA does not oppose Canwest's broadcasting assets being transferred to Shaw, provided that the issues and concerns expressed in this intervention are addressed in a meaningful way. Canadian independent producers look forward to an expanded and strong relationship with Shaw as it works to develop new business models for Canadian broadcasting built on making Canadian programming its number one priority.
166. The CMPA appreciates the opportunity to comment on the Application. A copy of this intervention has been sent to the Applicant.
167. Given the importance of this proceeding to our members, we reiterate our request to appear at the public hearing to elaborate on the views expressed in this intervention.

All of which is respectfully submitted.

Yours truly,

[Original signed by Norm Bolen]

Norm Bolen
President and CEO

⁴⁴ *Decision CRTC 2000-747*, Transfer of effective control of CTV Inc. to BCE Inc., December 7, 2000, at paragraph 37. This approach is also consistent with how many CRTC certified independent productions funds operate. That is, any profits earned by the funds from projects they fund are generally reinvested back into the fund.

Attachments

c.c.: Cynthia Rathwell Vice-President, Regulatory Affairs and Programming, Shaw Direct (via email: (Cynthia.Rathwell@shawdirect.ca))

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