



Broadcasting Decision CRTC 2006-309

Ottawa, 21 July 2006

Bell Globemedia Inc., on behalf of its licensed subsidiaries Across Canada

Application 2005-1504-1
Broadcasting Public Notice CRTC 2006-24
1 March 2006

Change in effective control

*The Commission **approves** an application by Bell Globemedia Inc. (BGM), on behalf of its licensed subsidiaries, for authority to effect a change in the effective control of BGM. A dissenting opinion by Commissioner Langford is attached.*

The application

1. The Commission received an application by Bell Globemedia Inc. (“BGM,” “the Company” or “the applicant”), on behalf of its licensed subsidiaries, for authority pursuant to section 14(4) of the *Television Broadcasting Regulations, 1987* (the Television Regulations) and section 10(4) of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations) to effect a change in the effective control of BGM.
2. Section 14(4) of the Television Regulations and section 10(4) of the Specialty Services Regulations require a licensee to obtain prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change by whatever means of the effective control of its undertaking.
3. Currently, BGM is controlled by BCE Inc. (BCE), which holds a 68.5% voting interest. The Woodbridge Company Limited and its wholly-owned subsidiary, 1565117 Ontario Limited (collectively, Woodbridge), hold the remaining 31.5% voting interest in BGM.
4. BGM owns and controls CTV Inc., Canada’s largest private broadcaster. Through its wholly-owned subsidiary, CTV Television Inc., CTV Inc. owns conventional and transitional digital television stations with their respective transmitters, as well as a satellite-to-cable service known as the Atlantic Satellite Network. BGM is also a leading presence in the Canadian specialty television industry with an ownership interest in numerous specialty programming undertakings. A list of the broadcasting undertakings controlled by BGM is set out in the appendix to this decision. In addition, through a subsidiary, BGM owns The Globe and Mail, a major Canadian newspaper with both a national and a Toronto edition.

5. The applicant proposed a series of transactions that would result in the reorganization of BGM's ownership structure. According to the applicant, the value of the proposed transaction would be \$685,195,257. The proposed transaction would be implemented as follows:
 - Ontario Teachers' Pension Plan Board (Teachers) would acquire 800,000,000 common shares in BGM from BCE at a cost of \$282,554,745;
 - Torstar Corporation (Torstar) would acquire 800,000,000 common shares in BGM from BCE at a cost of \$282,554,745; and
 - Woodbridge would acquire 340,000,000 common shares in BGM from BCE at a cost of \$120,085,767.
6. Teachers and Torstar each have ownership interests in a number of Canadian newspapers. Teachers holds 27.4% of the units of Osprey Media Income Fund (Osprey) and has one seat on Osprey's Board of Directors. Through its subsidiary, Osprey Media Group Inc., Osprey publishes 21 daily newspapers and 37 non-daily newspapers in 50 communities across Ontario. Its newspaper interests include The Kingston Whig-Standard, The St. Catharines Standard, The Peterborough Examiner and The Sault Star. Torstar's newspaper interests consist of the Toronto Star; CityMedia Group, which publishes daily and community newspapers in Southwestern Ontario; and Metroland Printing, Publishing & Distributing, publishers of more than 90 community newspapers in Southern Ontario.
7. Under the proposed transaction, Teachers and Torstar would each acquire a 20% voting interest in BGM, while Woodbridge would increase its voting interest in BGM from 31.5% to 40%. BCE's voting interest would be reduced from 68.5% to 20%. The applicant stated that, following the proposed transaction, there would be no clear-cut control of BGM, and that BGM and its subsidiary CTV Inc. would be controlled by BGM's Board of Directors (the Board) pursuant to a Unanimous Shareholder Agreement (USA).
8. The applicant submitted that the proposed transaction would involve a "change" rather than a "transfer" of the effective control of BGM, since the transaction would not result in a new entity or shareholder acquiring legal or effective control of the Company. The applicant submitted that the Company's two existing shareholders, Woodbridge and BCE, would continue to own the majority of shares, and that, under the proposed corporate structure and the rights of the parties established by the USA, BGM would be led by management under the supervision of the Board, which would not be controlled by any shareholder. Given that no transfer of control to another shareholder would be involved, the applicant maintained that the proposed transaction would not trigger any benefit obligations pursuant to the benefits policy set out in, *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999 (the Benefits Policy). In support of its position, BGM submitted that a review of all ownership decisions since the Commission began requiring the payment of benefits in

1989¹ demonstrates that tangible benefits have not been required by the Commission in situations where a licensee is, directly or indirectly, going from a situation of effective control to no clear-cut control as part of a reorganization involving existing shareholders and new minority investors. BGM contended that, if the Commission were to require benefits in circumstances such as those of the present case, it would be establishing a new policy that would serve as a significant disincentive to future direct or indirect minority investments in broadcasting undertakings.

9. The applicant confirmed that it would continue to carry out the \$230 million benefits package approved as part of BCE's acquisition of control of CTV Inc.² as well as the benefits approved in connection with CTV Inc.'s acquisition of controlling interest in NetStar Communications Inc. (now known as CTV Specialty Television Inc.), which had ownership interests in various specialty, pay and pay-per-view programming undertakings,³ of the television programming undertaking CKY-TV Winnipeg,⁴ of the television programming undertaking CFCF-TV Montréal,⁵ and of the specialty programming undertaking Report on Business Television.⁶
10. The applicant further indicated that it would abide by the following commitments with respect to cross-media ownership that mirror the key elements of the condition of licence imposed on CTV Inc.'s television stations in *Appendix 1 – Statement of Principles and Practices to Licence renewals for the television stations controlled by CTV*, Decision CRTC 2001-457, 2 August 2001 (Decision 2001-457):
 - CTV will maintain separate and independent news management and presentation structures for CTV television operations that are distinct from those of any newspaper operations effectively controlled directly or indirectly by Torstar or its affiliates or by Teachers, now or in the future, or by Osprey as long as Teachers holds this minority investment. Decisions on journalistic content and presentation for CTV will continue to be made solely by CTV news management; and

¹ *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

² *Transfer of effective control of CTV Inc. to BCE Inc.*, Decision CRTC 2000-747, 7 December 2000

³ Decision CRTC 2000-86, 24 March 2000

⁴ *Acquisition of the assets of CKY-TV Winnipeg and its transmitters*, Decision CRTC 2001-460, 2 August 2001

⁵ *CTV Inc. is authorized to acquire effective control of CFCF-TV Montréal subject to the condition that it increase the amount of tangible benefits to a level commensurate with the Commission's determination regarding the value of the transaction*, Decision CRTC 2001-604, 21 September 2001; *Acceptance of revised benefits package associated with the acquisition of CFCF-TV Montréal*, Broadcasting Decision CRTC 2002-40, 15 February 2002; and *Licence renewal for CFCF-TV*, Broadcasting Decision CRTC 2002-390, 29 November 2002

⁶ *Ownership change for ROBTv*, Decision CRTC 2001-645, 11 October 2001

- CTV news managers will not sit on the editorial board of any newspaper business effectively controlled, directly or indirectly, by Torstar or Teachers now or in the future, nor will any member of any editorial board of any newspaper business effectively controlled, directly or indirectly, by Torstar or Teachers now or in the future, participate in the news management of CTV television operations. This commitment also applies to the newspaper business owned by Osprey, as long as Teachers holds this minority interest.
11. The applicant considered that approval of the application would be in the public interest because it would provide ongoing stability to BGM and, particularly, to CTV Inc. while, at the same time, facilitating BCE's desire to reduce its ownership position in BGM. The applicant further considered that the acquisition of 20% interests by Teachers and Torstar would diversify the BGM's shareholder base and would represent a substantial investment in the Canadian broadcasting system by two well-respected Canadian entities that do not currently hold interests in other major broadcasting entities.

Interventions

12. The majority of the interventions supported the application. According to the supporting interveners, approval of the proposed transaction would ensure the stability of CTV Inc.'s broadcasting undertakings, thereby permitting these undertakings to meet their programming commitments.
13. Interventions commenting on or opposing the application, in whole or in part, included a joint intervention by the Directors Guild of Canada, the Writers Guild of Canada, and the Alliance of Canadian Cinema, Television and Radio Artists (collectively referred to as "the Unions"). The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) and Friends of Canadian Broadcasting (Friends) submitted individual interventions in which they stated, among other things, that they supported the position of the Unions. Interventions were also submitted by the Association des producteurs de films et de télévision du Québec (APFTQ), the Canadian Association of Broadcasters (CAB), the Canadian Film and Television Production Association (CFTPA), the Canadian Tamil Congress (CTC), the Communications Energy and Paperworkers Union of Canada (CEP), the Documentary Organization of Canada (DOC), Joe Clark and Les Étudiant(e)s et chercheurs et chercheuses en politiques de communication de l'Université de Montréal (ECPCUM). Numerous form letters opposing the application were also received. The Commission has considered all interventions in reaching its determinations on this application.
14. The Commission considers that the interveners have raised concerns in four broad areas: whether the applicant's proposal would involve a transfer of control of BGM, interpretation of the Benefits Policy, cross-media ownership and cultural diversity. The concerns of the interveners and the applicant's reply to the concerns are summarized below.

Possible transfer of control

Interveners' positions

15. The CAB supported the applicant's position, submitting that approval of the application would result in a corporate reorganization of the existing shareholding of BGM and the introduction of two new minority shareholders. The CAB argued that, while BCE would no longer be the controlling shareholder of BGM, no other entity would acquire control and the majority of the shares would remain with the existing shareholders.
16. The Unions, supported by Friends and DOC, disputed the applicant's argument that the proposed transaction would not result in a transfer of control. These interveners contended that Woodbridge would acquire effective control of BGM or, at a minimum, negative control, because, in their view, Woodbridge would be in a position to significantly influence BGM's Board of Directors.
17. The Unions submitted that, pursuant to the terms and provisions of the USA, Woodbridge would have the authority to nominate two of the directors on the Board, one of which would be the Chairman, who, in turn, would nominate the two independent directors, thus giving Woodbridge direct control or significant influence over the selection of four of the eight directors. The Unions further maintained that Woodbridge would have the authority to veto the appointment or removal of the Chief Executive Officer (CEO), who would also be a Board Member, thereby giving Woodbridge negative control over the selection of a fifth member of the Board. Finally, the Unions argued that, through its control of the Board, Woodbridge would also have control over the selection of BGM's senior management and the approval of its annual business plan and budgets.

Applicant's replies

18. BGM maintained its position that the proposed transaction would not result in any shareholder acquiring legal or effective control of BGM.
19. BGM submitted that, under the terms of the USA, Woodbridge would have the authority to appoint only two of the eight members of the Board, or 25% of the members. In addition, BGM stated that Woodbridge, which would hold 40% of the voting shares, would not have any power of appointment over the independent directors, given that such directors must be appointed by the holders of at least 50% of the voting shares of the Company. As well, BGM submitted that Woodbridge would not have the authority to unilaterally appoint or remove the CEO; to form a quorum of the Board on its own or to prevent the formation of a quorum; to impede or obstruct the Board's business; or to cause BGM to undertake any particular course of action, including the implementation of any fundamental items, either in its capacity as a minority shareholder or by virtue of its representation on the Board. Moreover, Woodbridge would not have a veto or approval right over actions taken in the ordinary course of business, or over the Company's business plan or budget.

20. In light of the above, BGM argued that Woodbridge would not be in a position to exercise control or even negative control of BGM or the Board. The applicant added that, although Woodbridge would be the largest shareholder, it would remain a minority investor with Board representation that would be significantly less than its proportionate ownership interest, and with limited approval rights under the USA. According to the applicant, such approval rights are typical of the protection afforded to minority investors.

Interpretation of the Benefits Policy

Intervenors' positions

21. Intervenors expressed a number of views regarding when the requirement to pay benefits under the Benefits Policy should be triggered. The Unions argued that the ownership and control of the Company following the proposed transaction would be sufficiently different from its ownership and control prior to the proposed transaction to justify a requirement for benefits. The Unions noted that the Television Regulations and the Specialty Services Regulations require a licensee to obtain prior approval of the Commission for any change in the effective control of its undertaking. They were of the view that whether the change involved a “transfer” to another shareholder was irrelevant and that the necessity for Commission approval should automatically activate a corresponding requirement to provide tangible benefits. In support of this position, the Unions cited Decision CRTC 90-630, 6 July 1990, (Decision 90-630) where the Commission approved a transaction in which effective control of Telelatino Network Inc. (Telelatino) passed from an individual shareholder to Telelatino’s board of directors. In that case, Telelatino put forward tangible benefits in the amount of \$3.277 million over a five-year period.
22. The APTFQ submitted that the Benefits Policy should be interpreted so that any transaction that involves either the relinquishing or the acquisition of the effective control of a company should be subject to the Benefits Policy.
23. The Unions and DOC contended that the size and nature of this proposed transaction warrant a requirement that the applicant provide tangible benefits. The Unions further argued that the proposed transaction would permit Teachers and Torstar to obtain significant ownership interest in Canada’s largest private broadcaster. The Unions concluded that, given the nature and magnitude of the transaction, as well as the parties involved, there are no policy reasons to exempt the parties from the provisions of the Benefits Policy. DOC was concerned that, if no benefits were payable in this case, there would be a negative impact on independent producers and audiences would lose access to popular Canadian programs.
24. The CFTPA and the APFTQ argued that, given that CTV Inc. is a national institution within the Canadian broadcasting system, the recapitalization of those valuable broadcast properties should only take place in a context in which tangible benefits are provided. They argued that the Commission has jurisdiction to assess what benefits, including a lesser benefit, should be assessed in this instance.

25. Interveners also expressed concern about the effect that a decision by the Commission not to require benefits in this instance would have on future transactions. The Unions were concerned that this would open the possibility for corporations to execute changes of ownership in multiple steps (multi-step transactions), and thereby avoid paying tangible benefits until the purchase of a percentage that would provide a shareholder with effective control. The result would be a benefits package that would reflect the value of only the last step, as opposed to a benefits package on the entire transaction. The CFPTA recommended that, in the event that benefits were not required in this case, the Commission should reassess the Benefits Policy to ensure that this loophole was closed.
26. Joe Clark is involved in the Open and Closed Project, a not-for-profit organization of which the central aim is to establish standards for captioning, audio description, subtitling and dubbing. Mr. Clark submitted that the current application should be denied unless the applicant fulfilled existing outstanding benefits commitments and was subject to additional benefits obligations in relation to the current application. Mr. Clark was also of the view that these benefits should include support for the Open and Closed Project.

Applicant's replies

27. The applicant reiterated its position that, upon completion of the transaction, the Company would be led by management under the supervision of the Board, which would not be controlled by any shareholder; as such, no transfer of control would be involved. The applicant submitted that the Benefits Policy does not apply to a transaction that does not result in a transfer of control, and that, in this particular case, the payment of benefits is not required by regulation, policy or precedent.
28. With respect to the acquisition of Telelatino approved in Decision 90-630, the applicant argued that this was the only case since the Benefits Policy was first established in 1989 where benefits were paid in a reorganization resulting in a broadcasting undertaking going from a position of effective control to a position of no clear cut control that did not involve a new entity. BGM submitted that the Telelatino case was not a relevant precedent that could be distinguished on its own unique set of facts.
29. BGM argued that the Telelatino case involved a licensee that had been operating out of compliance with its licensing conditions from launch. It noted that Telelatino had been called to four public hearings in five years and had been given two short-term licence renewals of five months and six months. BGM argued that the benefits volunteered by the licensee and accepted by the Commission appeared, for the most part, to be monies for Canadian content exhibition and programming expenditures aimed at bringing the licensee's performance more closely into line with the Canadian programming commitments made, but never implemented, when the service was originally licensed in 1984. BGM concluded that the Telelatino benefits package was not an incremental initiative put forward as the *quid pro quo* for the acquisition of control, but was rather a means for the licensee and its shareholders to bring the licensee into compliance with historic obligations that had never been fulfilled.

30. BGM argued that the Commission should continue to require benefits only on those transactions that result in a transfer of effective control to another shareholder. It argued that the nature and magnitude of the transaction and financial background of the parties involved cannot in and of themselves trigger the obligation to pay benefits in the absence of such a transfer of control.
31. BGM reiterated that to require tangible benefits in the circumstances would have the effect of establishing a new policy and would serve as a significant disincentive to future direct or indirect minority investments in broadcasting undertakings. It was further of the view that the Commission should reject any suggestion to amend the Benefits Policy in the context of a single transaction. It submitted that procedural fairness and natural justice demand that there be a regulatory certainty in the application of the Commission's policies, and that any amendments to the Benefits Policy should only be made in the context of an industry-wide consultation. Such changes, it argued, should apply on a going forward basis and without retroactive application.
32. With respect to the concerns about multi-step transactions, BGM argued that the Commission has, on numerous occasions,⁷ permitted multi-step transactions culminating in the acquisition of control, without requiring benefits until the actual transfer of control occurred. In those cases, BGM submitted, benefits have only been payable on the acquisition of control and on the value of the equity interest that took the existing shareholder to position of control, not on the shareholder's total holdings.
33. The applicant did not reply to the intervention by Joe Clark.

Cross-media ownership

Interveners' concerns

34. CEP, CTC and ECPCUM all raised concerns about cross-media ownership issues. Particular concern was expressed about the introduction of Torstar as investor in BGM, given that Torstar controls The Toronto Star and BGM controls The Globe and Mail. CTC was concerned that the transaction could result in the merger of those two newspapers. CEP submitted that, following the transaction, BGM would own both The Toronto Star and The Globe and Mail, giving the Company effective control over a large share of daily newspaper circulation in Ontario. ECPCUM was concerned that, following the transaction, the CTV and TQS television networks would be controlled by Torstar.

⁷ Examples cited included YTV Canada Inc. – *Transfer of shares*, Decision CRTC 94-886, 24 November 1994; *Transfer of effective control of CUC Broadcasting Limited to Shaw Communications Inc. – Approved*, Decision CRTC 95-57, 17 February 1995; *Acquisition of assets and transfer of control – Approved*, Decision CRTC 96-250, 21 June 1996; Telelatino Network Inc. and Corus Entertainment – *Ownership change for Telelatino*, Decision CRTC 2001-665, 29 October 2001; Teletoon Canada and Corus Entertainment – *Corus authorized to increase its minority ownership holdings in Teletoon*, Decision CRTC 2001-522, 24 August 2001; and The Family Channel – *Transfer of control and 50% shares of The Family Channel Inc.*, Decision CRTC 2001-280, 17 May 2000.

35. CEP recommended that the Commission deny the application. Given that print media is not within the Commission's jurisdiction, CEP further recommended that all similar applications be held in abeyance until wider discussions are held within the government and with the public concerning the mandate and role of the CRTC. As well, CEP recommended that the Commission develop clear and firm policies to ensure that newsroom independence is maintained and that a handful of large corporations cannot dominate the local or national media landscape.
36. ECPCUM recommend that, if the Commission were to approve the application, BGM should be directed to divest of one of its newspapers and establish separate newsrooms for its newspapers and television stations, and that the Commission require Torstar to divide its operations and get out of one of the media sectors with which it is involved.

Applicant's replies

37. The applicant stated that, under the terms of the proposed transaction, Torstar would not acquire control of BGM but would only acquire a 20% minority interest in the Company. It further stated that The Toronto Star and The Globe and Mail are not being merged, and that the transaction would not result in BGM obtaining any ownership interest in The Toronto Star. The applicant further submitted that the transaction would have no effect on BGM's management, operations or mix of businesses, and that there are no plans to integrate the business of BGM and any of its shareholders, including Torstar. The applicant also indicated that control of CTV Inc. television stations would not be acquired by Torstar, and that TQS would not be affected by the transaction since CTV Inc. currently holds only an indirect minority interest in TQS and does not manage or control TQS.
38. BGM further reiterated that it would adhere to the commitments set out in paragraph 10 above with respect to the separation of CTV's news operations and the news interests of its shareholders, which mirror the key relevant principles of the *Statement of Principles and Practices* as set out in Appendix 1 to Decision 2001-457.

Cultural diversity

Intervener's position

39. The CTC, which represents the Tamil community, submitted that the Commission should examine the impact of the proposed transaction on minority communities. CTC also wished to hear Torstar's views on diversity and how such views would be represented at the level of the Board.

Applicant's reply

40. BGM affirmed that the broadcasting undertakings that are the subject of this transaction would continue to be guided by CTV Inc.'s cultural diversity plan, and that BGM would continue to institutionalize cultural diversity as an integral part of its workplace and programming.

Commission's analysis and determinations

41. Upon completion of the transaction, Woodbridge would hold a 40% minority voting interest in BGM, and the majority of shares would remain with the existing shareholders BCE and Woodbridge. After examining the USA, as well as the positions of the applicant and the interveners, the Commission is of the view that neither Woodbridge nor any other shareholder would acquire control of BGM. Thus, the Commission finds that the applicant has properly characterized the transaction as a change of control under which control would pass from BCE, whose voting interests would be reduced from 68.5% to 20%, to the Company's Board, rather than a transfer of control to another shareholder or entity.
42. The purpose of the Benefits Policy is to ensure that applicants have filed the best possible proposal under the circumstances and that the benefits proposed in the application are commensurate with the size and nature of the transaction, given that the Commission does not solicit competing applications for the transfer of ownership or control of broadcasting undertakings. The Commission must determine whether the Benefits Policy applies to the current transaction. The Benefits Policy, as set out in paragraphs 15 and 16 of Public Notice 1999-97, reads as follows:

The Commission hereby amends its benefits policy in respect of all transfers of ownership or control involving television broadcasting undertakings, including conventional, pay, pay-per-view and specialty television undertakings. It will generally expect applicants to make commitments to clear and unequivocal tangible benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission. This policy will apply to any application filed on this date or after.

All other policies with respect to transfer of ownership or control will remain in place. Specifically, the existing policy respecting the fulfilment of benefit commitments, as set out in PN 1993-68, will continue to be applied.

43. The Commission considers that the Benefits Policy, as outlined above, applies in cases involving the acquisition of control of a licensee by a person (as defined in the applicable regulations), where such person has, for example, the ability to cause the licensee or its board of directors to undertake a course of action. The Commission does not consider that such an acquisition of control is entailed in the present application. The Commission is of the view that the Telelatino transaction approved in Decision 90-360 represented an exception with its own circumstances where benefits were offered and accepted by the Commission.
44. While noting the position of several interveners that factors such as the size of the transaction and the importance of BGM's holdings in the Canadian broadcasting system would, in and of themselves, warrant a requirement that the applicant provide tangible benefits, the Commission considers that this would amount to an amendment to the Benefits Policy that should be considered as part of a separate policy review. The

Commission notes that, in *Review of certain aspects of the regulatory framework for over-the-air television*, Broadcasting Notice of Public Hearing CRTC 2006-5, 12 June 2006, the Commission announced that it would hold a public hearing commencing 27 November 2006 to review certain aspects of the regulatory framework for over-the-air television. The Commission also invited written comments on certain matters identified in that Notice of Public Hearing, including what changes, if any, should be made to the Commission's Benefits Policy.

45. With respect to the concerns about cross-media ownership, the Commission notes that Torstar, which owns The Toronto Star, is acquiring only a 20% minority interest in BGM. It further notes that the transaction would not result in BGM obtaining an ownership interest in The Toronto Star as well as the assurances provided by the applicant that The Toronto Star and The Globe and Mail will not merge.
46. The Commission is further satisfied that the commitments made by BGM that are set out in paragraph 10 above are sufficient to ensure that CTV Inc.'s television news operations and editorial decisions are distinct from any newspaper operations controlled by Torstar or by Teachers.
47. The Commission further notes the applicant's assurances that the broadcasting undertakings that are the subject of this transaction would continue to be guided by CTV Inc.'s cultural diversity plan and that BGM would continue its commitment to ensuring diversity in its workplace and programming.

Conclusion

48. In light of all of the above, the Commission **approves** the application by Bell Globemedia Inc., on behalf of its licensed subsidiaries, to change its effective control through a series of transactions under which:
 - Teachers would acquire 800,000,000 common shares in BGM from BCE at a cost of \$282,554,745 (20% voting interest);
 - Torstar would acquire 800,000,000 common shares in BGM from BCE at a cost of \$282,554,745 (20% voting interest); and
 - Woodbridge would acquire 340,000,000 common shares in BGM from BCE at a cost of \$120,085,767 (increasing its voting interest from 31.5% to 40%).
49. The Commission expects BGM to adhere to the following commitments that it has made in order to ensure editorial independence between CTV Inc.'s broadcasting undertakings and the newspaper holdings of Torstar and Teachers:

- CTV will maintain separate and independent news management and presentation structures for CTV television operations that are distinct from those of any newspaper operations effectively controlled directly or indirectly by Torstar or its affiliates or by Teachers, now or in the future, or by Osprey as long as Teachers holds this minority investment. Decisions on journalistic content and presentation for CTV will continue to be made solely by CTV news management; and
 - CTV news managers will not sit on the editorial board of any newspaper business effectively controlled, directly or indirectly, by Torstar or Teachers now or in the future, nor will any member of any editorial board of any newspaper business effectively controlled, directly or indirectly, by Torstar or Teachers now or in the future, participate in the news management of CTV television operations. This commitment also applies to the newspaper business owned by Osprey, as long as Teachers holds this minority interest.
50. The Commission expects the applicant to file, within 30 days of this decision, an executed and signed version of the Bell Globemedia Inc. Unanimous Shareholder Agreement between The Woodbridge Company Limited, 1565117 Ontario Limited, BCE Inc., Ontario Teachers' Pension Plan Board, Torstar Corporation and Bell Globemedia Inc.
51. The Commission reminds the applicant that it must continue to carry out the benefits packages approved as part of BCE's acquisition of control of CTV Inc., as well as the benefits approved in connection with CTV Inc.'s acquisition of controlling interest in NetStar Communications, CKY-TV Winnipeg, CFCF-TV Montréal and the specialty programming undertaking Report on Business Television.
52. The Commission acknowledges the concerns expressed by parties concerning multi-step transactions and reserves the right in the future, in the case of such transactions, to review not just the final step, but the entire sequence of events, including all previous steps, in order to determine the appropriateness of any proposed benefits package.

Secretary General

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

Appendix to Broadcasting Decision CRTC 2006-309
Broadcasting undertakings controlled by Bell Globemedia Inc.

CONVENTIONAL TELEVISION

Licensee: CTV Television Inc.

Location of undertaking	Broadcasting undertaking	Transmitters
British Columbia	CIVT-TV Vancouver	
	CIVT-DT Vancouver	
Alberta	CFCN-TV Calgary	CFCN-TV-1 Drumheller CFCN-TV-2 Banff CFCN-TV-3 Brooks CFCN-TV-6 Drumheller CFCN-TV-13 Pigeon Mountain CFCN-TV-14 Canmore (Harvie Heights) CFCN-TV-16 Oyen
	CFCN-TV-5 Lethbridge	Alberta: CFCN-TV-4 Burmis CFCN-TV-8 Medicine Hat CFCN-TV-17 Waterton Park CFCN-TV-18 Coleman British Columbia: CFCN-TV-9 Cranbrook CFCN-TV-10 Fernie CFCN-TV-11 Sparwood CFCN-TV-12 Moyie CFCN-TV-15 Invermere CFWL-TV-1 Invermere
	CFRN-TV Edmonton	CFRN-TV-7 Lougheed
	CFRN-TV-3 Whitecourt	CFRN-TV-1 Grande Prairie CFRN-TV-2 Peace River CFRN-TV-8 Grouard Mission CFRN-TV-9 Slave Lake CFRN-TV-11 Jasper
	CFRN-TV-4 Ashmont	CFRN-TV-5 Lac La Biche CFRN-TV-12 Athabasca

	CFRN-TV-6 Red Deer	CFRN-TV-10 Rocky Mountain House
Saskatchewan	CFQC-TV Saskatoon	CFQC-TV-1 Stranraer CFQC-TV-2 North Battleford
	CICC-TV Yorkton	CICC-TV-2 Norquay CICC-TV-3 Hudson Bay CIWH-TV Wynyard CIWH-TV-1 Humboldt CIEW-TV Warmley (Carlyle Lake)
	CIPA-TV Prince Albert	CIPA-TV-1 Spiritwood (Alticane) CIPA-TV-2 Big River CKBQ-TV Melfort CKBQ-TV-1 Nipawin
	CKCK-TV Regina	CKCK-TV-1 Colgate CKCK-TV-2 Willow Bunch CKMC-TV Swift Current CKMC-TV-1 Golden Prairie CKMJ-TV Marquis CKCK-TV-7 Fort Qu'Appelle
Manitoba	CKY-TV Winnipeg	CKYA-TV Fisher Branch CKYB-TV Brandon CKYB-TV-1 McCreary CKYD-TV Dauphin CKYF-TV Flin Flon CKYP-TV The Pas CKYS-TV Snow Lake CKYT-TV Thompson
Ontario	CFTO-TV Toronto	CFTO-TV-1 Severn Falls (Orillia) CFTO-TV-2 Bobcaygeon (Peterborough)
	CFTO-DT Toronto	
	CHBX-TV Sault Ste. Marie	CHBX-TV-1 Wawa
	CICI-TV Sudbury	CICI-TV-1 Elliot Lake CKNY-TV-11 Huntsville

	CITO-TV Timmins	CITO-TV-1 Kapuskasing CITO-TV-2 Kearns CITO-TV-3 Hearst CITO-TV-4 Chapleau
	CKNY-TV North Bay	
	CJOH-TV Ottawa	CJOH-TV-6 Deseronto CJOH-TV-8 Cornwall CJOH-TV-47 Pembroke
	CKCO-TV Kitchener	CKCO-TV-2 Warton
	CKCO-TV-3 Oil Springs	
	Networks	Scarborough Toronto
Quebec	CFCF-TV Montréal	
New Brunswick	CKCW-TV Moncton	New Brunswick: CKAM-TV Upsalquitch Lake CKAM-TV-1 Newcastle CKAM-TV-2 Chatham CKAM-TV-3 Blackville CKAM-TV-4 Doaktown CKCD-TV Campbellton Prince Edward Island: CKCW-TV-1 Charlottetown CKCW-TV-2 St. Edward/St.Louis
	CKLT-TV Saint John	CKLT-TV-1 Florenceville (Woodstock) CKLT-TV-2 Boiestown
Nova Scotia	CJCB-TV Sydney	CJCB-TV-1 Inverness CJCB-TV-2 Antigonish CJCB-TV-3 Dingwall CJCB-TV-4 New Glasgow CJCB-TV-5 Bay St. Lawrence CJCB-TV-6 Port Hawkesbury

	CJCH-TV Halifax	CJCH-TV-1 Canning CJCH-TV-2 Truro CJCH-TV-3 Valley CJCH-TV-4 Bridgetown CJCH-TV-5 Sheet Harbour CJCH-TV-6 Caledonia CJCH-TV-7 Yarmouth CJCH-TV-8 Marinette
--	-----------------	---

SATELLITE-TO-CABLE

Licensee	Location of undertaking	Broadcasting undertaking
CTV Television Inc.	Atlantic Provinces	Atlantic Satellite Network (ASN)

SPECIALTY TELEVISION (National)

Licensee	Type of service	Broadcasting undertaking
CTV Television Inc.	Analog	The Comedy Network (TCN)
		CTV Newsnet
		ROBTv
	Category 1	CTV Travel
	Category 2	CTV NewsVu (Broadcasting Decision CRTC 2005-377, not yet launched)
CTV Television Inc.	Analog	Talk TV
1163031 Ontario Inc.	Analog	Outdoor Life Network (OLN)
2953285 Canada Inc.	Analog	Discovery Channel
	Category 2	Discovery HD Theatre (Broadcasting Decision CRTC 2005-519, not yet launched)
Discovery Civilization Canada Company	Category 2	Discovery Civilization Channel
Animal Planet Canada Company	Category 2	Animal Planet

The Sports Network Inc.	Analog	TSN
	Category 2	ESPN Classic Canada
Le Réseau des sports (RDS) inc.	Analog	RDS
	Category 1	Réseau Info Sports (RIS)
	Category 2	Le Réseau Grand Air (Broadcasting Decision CRTC 2005-347, not yet launched)

Dissenting opinion of Commissioner Stuart Langford

I disagree with my colleagues in the majority. In my view they have allowed themselves to be distracted from the simple facts of this matter by a virtual avalanche of legal documents and legal opinions that either by design or by chance confuse what is in fact a straightforward transfer of control from one shareholder, BCE, to a group of four shareholders: Woodbridge, BCE, Torstar and Teachers.

The further delegation of that control to BGM's Board of Directors and senior management is a red herring. It in no way diminishes the fact that upon approval by the Commission, the control over BGM's broadcasting assets, the jewel in the crown of which is CTV, will move from a single shareholder to a group of four associated shareholders. Benefits in the amount of 10% of the value of the transaction must be paid.

Hard to believe:

BGM's spokesman on this file and the company's lawyers vigorously take the position that no benefits are payable because "no new entity or shareholder will be acquiring legal or effective control of the Company." (Interrogatories at p. 13) At first blush, that argument appears plausible. Certainly, the majority is convinced. Stripped to their bare bones facts, however, the documents and precedents upon which BGM's various advocates rely in stating this proposition simply do not support their case.

In its Supplementary Brief to this application, filed in December 2005, BGM, among 21 pages of argument, attempts to make two key points:

1. "...there is a change in control in that, following Commission approval of this application, BCE will no longer be the controlling shareholder of BGM."
2. "While BCE will no longer control BGM, no other shareholder or entity is acquiring control; BGM will not have a controlling shareholder."

Point one is indisputably accurate; if this deal goes through, BCE "will no longer be the controlling shareholder of BGM." Point two, on its face, seems fanciful. No doubt, there will be no single "controlling shareholder", but it seems hard to believe that a multi-million, perhaps multi-billion dollar business like BGM will be out of control. Surely, some "entity", to borrow BGM's terminology, will be in control.

Suspicious:

A number of interveners in this case argued forcefully that control will rest with Woodbridge which, upon Commission approval of this transaction, will hold 40% of BGM's voting shares. By a series of clever and creative leaps of logic, these interveners envisage a situation whereby Woodbridge, using its special powers under the Unanimous Shareholders Agreement (USA), could convert its right to nominate two directors and, probably, the CEO of BGM into the ability to nominate four and conceivably even five of the company's eight directors.

This, argue the Unions in paragraph 26 of their submission, amounts at the very least to "negative control" of BGM and likely "effective control of the Board." Perhaps, but the record in this matter does not support this contention. Sufficient information exists to arouse the sort of suspicions harbored by the Unions, but suspicions should not be confused with facts.

Because:

In their legal opinion prepared at the request of BGM, the law firm of Johnston & Buchan (J&B) takes on the challenge of demonstrating that though BCE has given up control, no one else has taken it over: "...we are of the view that the transaction will indeed not result in the acquisition of control by any shareholder or group of shareholders." (p. 2) Absent the opportunity to probe the Union's suspicions in an open forum, I conclude that the record supports half of J&B's conclusion. Upon approval of this transaction by the Commission, control will not reside in the hands of "any shareholder."

The notion that control will not reside with any "group of shareholders", however, is a conclusion that I for one have difficulty accepting. Perhaps that is why in its legal opinion J&B never says why it comes to this conclusion. J&B's rationale seems to echo that oldest of parental maxims: "Why is it so?" "Because."

The law:

Section 14 of the *Television Broadcasting Regulations, 1987* (the Regulations) under which BGM's application for Commission approval of this transaction is made, sets out a lengthy list of definitions and directions pertinent to the issue of control. To the uninitiated, this multi-paragraph regulatory pronouncement is daunting in its detail. With patience, however, section 14 can be navigated. The following passages are particularly pertinent:

1. 14(1) defines "person" to include a "corporation".
2. 14(1) includes in the definition of an "associate", "a person with whom the person has entered into ... an agreement in respect of the voting shares of a licensee corporation or a corporation that has, directly or indirectly, effective control of a licensee corporation ..."

3. 14(2) states that: “control of a voting interest by a person includes situations which” ... (b) “the person by means of ... an agreement determines the manner in which the interest is voted ...”
4. 14(3) says that: “For the purpose of this section, effective control of a licensee or its undertaking includes situations in which (a) a person controls, directly or indirectly ... a majority of the voting interests of the licensee; (b) a person has the ability to cause the licensee or its board of directors to undertake a course of action.”

Taking all of these pieces together, it is possible to assemble a profile of a controlling entity as follows: a person [14(1)] may be composed of a group of associated corporate persons [14(1)(g)], as evidenced by an agreement determining the manner in which they will vote [14(2)(b)] so as to control a corporation that in turn controls a licensee [14(3)(a) and (b)]. In this case, the “person” is the group of four shareholders (Woodbridge, BCE, Torstar and Teachers) who are associates bound by a USA and who, together, control 100% of BGM’s voting shares. BGM, in turn, controls CTV and 16 specialty services, all “licensees” within the meaning of the Regulations.

Unsubstantiated opinions:

Despite J&B’s assessment to the contrary, upon approval by the Commission control will pass from BCE to a group of four shareholders. On page 5 of its legal opinion, J&B agrees that BCE and Woodbridge together own the majority of voting shares of BGM (60%), but declares that the two corporate persons “are not associates of each other.” This conclusion seems to fly in the face of paragraph 14(1)(g) of the Regulations. That paragraph clearly stipulates that an associate relationship does exist. BCE has indeed “entered into ... an agreement [with Woodbridge as well as Torstar and Teachers] in respect of the voting shares of [BGM] a corporation that has effective control of a licensee corporation ...” Curiously, J&B offers no reasons for concluding that BCE and Woodbridge are not “associates.”

On page 6 of their legal opinion, J&B reach another conclusion, but once again offer no guidance as to how its lawyers came to it. “If none of the proposed share transfers in the BGM reorganization trigger the benefits requirement viewed separately,” J&B declares, “then the policy is inapplicable to the transfers viewed collectively.” Why this should be so, J&B does not say, and I for one am unable to explain.

Arguably, J&B’s conclusion might correctly characterize a case where members of a small group such as we have here have not entered into an agreement about how to control the corporation in question. Or, if a case arose where many transfers to unrelated shareholders of small interests in a publicly traded corporation took place, J&B’s conclusion might well apply. But here, we are dealing with a closely held private corporation. Two of the four owners have a business relationship in broadcasting stretching back years. The two newcomers are surely well known to BCE and Woodbridge. The USA they have agreed to indicates the existence of a comfortable working relationship among the members of this group of four.

The precedents:

The Baton Broadcasting Incorporated (Baton) case, upon which the applicants place so much reliance (unwisely in my view), only superficially resembles the case at hand. Baton, decided in 1998, also dealt with control of CTV and the reorganization of share holdings in its parent company. There, however, all resemblance to this case stops. The 1998 reorganization saw Telegram Corporation Limited's 40.65% ownership interest in Baton go first in equal shares to the four holding companies of four Eaton brothers, and then be widely dispersed to a great many unrelated shareholders through a public offering made through investment dealers.

The Eaton family's controlling interest, directly in Baton and indirectly over CTV, did not remain in the hands of a small group of private company shareholders, but was converted in a two step process into shares in a publicly traded company whose securities were owned in small amounts by a large number of unrelated investors. The Commission had no difficulty accepting the supposition that under the terms of that reorganization a situation of no clear-cut control in a new entity had been created. That is not the case here.

A far more pertinent precedent is to be found in the Telalatio Network Inc. (Telalatio) decision (CRTC 90-630) of 1990. In an effort to revitalize Telalatio, the Mascia family reduced its voting interest in the licensee from 67.3% to 27.4%. Four new shareholders came on board, bringing the total number of shareholders to 10. The 10 entered into a unanimous shareholders agreement giving control of the licensee to the board of directors. Sound familiar?

The Commission concluded that control had passed, "... from Mr. Mascia to the licensee's Board of Directors." Tangible benefits in the amount of \$3,277,000 were levied.

BGM and its legal advisers attempt to distinguish Telalatio from the case at hand by characterizing the benefits levied as a sort of retroactive payment of monies owed to fulfill past commitments upon which Telalatio had defaulted. If that is so, it is certainly not stated in the decision.

The Commission in the Telalatio case does review the licensee's financial difficulties and past failings, but makes no connection between them and the benefits levied. Rather, the Commission weighs both the intangible and the tangible benefits proposed by the applicants on their own merits and accepts them as meeting a test not based upon contrition for past wrongs, as BGM suggests, but upon the core elements of the Benefits Policy:

In general, the Commission is satisfied that the benefit of a continuation and improvement of the existing service, together with the other tangible and intangible benefits identified by the applicant, are significant and unequivocal, and commensurate with the size and nature of the transaction, taking into account the scale of the resources available to the new shareholders. Moreover, the Commission is satisfied that approval of the application is in the public interest.

A third precedent referred to by BGM, the Selkirk Broadcasting Limited (Selkirk) decision, CRTC 83-567, dealt with the transfer of 80% of Selkirk's voting shares to the Canada Trust Company. The remaining 20% remained with newspaper publisher, Southam. The transaction raised the control question not in relation to benefits payable or not payable, but because at that time cross-ownership between newspapers and broadcasting licensees was restricted.

The question of agreements, presumably such as those referred to in section 14 of the Regulations, was regarded by the Commission as fundamental to the issue of control: "...based upon the evidence presented, the Commission finds that there are no contracts relating to the management of Selkirk's affairs, either between Southam and Selkirk, or between Southam and any of the other Class B shareholders. The Commission, therefore, considers that it is only on the basis of share ownership that the question of where control of Selkirk will reside must be determined."

The group's to give:

In the BGM case at issue in this application, there exists the very sort of contract or agreement notable by its absence in Selkirk. BGM's new group of four controlling shareholders has entered a contract, the USA. That in itself is evidence of control. The fact that by way of paragraph 2.1 of the USA the group of four delegates much of its control to a Board of Directors is further evidence. One cannot delegate powers one does not possess. The reason the board of directors will have control is because it has been given to them by the group of four, Woodbridge, BCE, Torstar and Teachers. It is the group's to give.

When in doubt:

Paragraph 14(3)(c) of the Regulations provides the Commission with wide discretion when it comes to the determination of where effective control lies. Precisely the same discretion in precisely the same words is bestowed on the Commission by way of paragraph 10(3)(c) of the *Specialty Services Regulations, 1990*. In my view, by building such discretion into the Regulations, the Commission signaled its clear intention to err on the side of presuming a discernible and traceable transfer of effective control whenever possible. Put another way, unless there is overwhelming evidence to the contrary, when in doubt, the Commission should conclude that control has passed.

Benefits must flow:

In cases such as the one at hand where so many indicia of transferred control, indicia set out in the Regulations, have been met, surely the logical course is to adopt the spirit of paragraph 14(3)(c) and resolve any doubts in favor of finding that effective control now rests in the hands of the transferees and the newly defined but still active transferor, the group of four. The alternative, that proposed by the majority, leaves us with an absurdity, the notion that sophisticated investors such as those that make up the group of four would risk millions of dollars while simultaneously abandoning control over their investment.

That is a proposition to which I cannot subscribe. I would have made a determination in this case that effective control over BGM and the many licensees it owns has been transferred to and rests with Woodbridge, BCE, Torstar and Teachers. Together, this group of four constitutes a “person” within the meaning of the Regulations, composed of associated corporate persons who are joined as a single entity by “an agreement in respect of the voting of shares.” Control has passed from one entity to another and, consequently, benefits must flow.