



## Broadcasting Public Notice CRTC 2008-4

Ottawa, 15 January 2008

### Regulatory policy

#### Diversity of voices

*In this public notice, the Commission sets out its determinations with respect to the proceeding on the diversity of voices in Canada that was the subject of the 17 September 2007 Public Hearing. The Commission is introducing new policies with regard to cross-media ownership; the common ownership of television services, including pay and specialty services; and the common ownership of broadcasting distribution undertakings. The Commission's existing policies with respect to the common ownership of over-the-air television and radio undertakings remain in effect. A summary of the Commission's policy framework related to diversity of voices can be found in the appendix to this document.*

*Matters related to a proposed Journalistic Independence Code drafted by the Canadian Broadcast Standards Council that were discussed as part of this proceeding are addressed in Journalistic Independence Code, Broadcasting Public Notice CRTC 2008-5, 15 January 2008.*

*The Commission is also issuing Call for comments on the public disclosure of aggregate financial data for large ownership groups of over-the-air radio and television broadcasters, Broadcasting Public Notice CRTC 2008-6, 15 January 2008, which seeks comment on the publication of financial data related to broadcasting undertakings.*

#### A. Introduction

1. On 13 April 2007, the Commission issued Broadcasting Notice of Public Hearing 2007-5 (NPH 2007-5) announcing that, in light of the current wave of consolidation in the Canadian broadcasting industry, it would hold a public hearing commencing 17 September 2007 in Gatineau, Quebec (the Public Hearing) to review its approach to ownership consolidation and other issues related to the diversity of voices in Canada.
2. Concurrent with NPH 2007-5, the Commission also issued Broadcasting Public Notice 2007-41 seeking comments on a proposed Journalistic Independence Code drafted by the Canadian Broadcast Standards Council (CBSC). The Commission indicated that comments submitted in that proceeding would be considered by the Commission as part of the proceeding on diversity of voices.

3. The Commission received 162 written comments in response to NPH 2007-5. In addition, 1,800 comments were filed in response to a campaign by Canadians for Democratic Media. Fifty-two parties appeared at the Public Hearing. Following the Public Hearing, parties were permitted to file final written comments no later than 12 October 2007.
4. Although NPH 2007-5 identified a number of specific issues that the Commission wished parties to address, the oral hearing focussed on three key issues:
  - The plurality of commercial editorial voices in local and national markets and the most effective means of ensuring that Canadians are exposed to an appropriate plurality of these voices.
  - The diversity of programming choices offered to Canadians and the effectiveness of existing or proposed regulatory tools in ensuring appropriate diversity of content.
  - The effectiveness of existing and proposed safeguards with respect to journalistic content in cross-media ownership situations, such as those set out in the proposed CBSC Journalistic Independence Code attached to Broadcasting Public Notice 2007-41.
5. In this public notice, the Commission first deals with a number of matters that provide a context for its consideration of issues related to diversity of voices. These include the definition of key terms, a discussion of the current state of diversity of voices in Canada, and the identification of the overall approach that it will take in its consideration of relevant issues. The Public Notice then moves on to address the major issues related to this proceeding, a number of other issues raised NPH 2007-5, and finally issues related to community broadcasting. The Journalistic Independence Code is addressed separately in Broadcasting Public Notice 2008-5, also published today. The Commission is also issuing Broadcasting Public Notice 2008-6, 15 January 2008, which seeks comment on the publication of financial data related to broadcasting undertakings.

## **B. The context**

### **B-1 What does the term “diversity of voices” encompass?**

6. Although terminology varies and various parties to the proceeding provided a range of perspectives and understanding of the term “diversity of voices,” the common objective appears to be to ensure the provision of a diversity of viewpoints either through ownership regulations or by means of programming obligations.

#### **The meaning of “voice”**

7. The concept of “voice” generally refers to the editorial voice. As such, it refers to the sources of news and information programming that are essential to a functioning democracy. The presence of many sources of information in the broadcasting system is taken to mean that a diversity of voices or viewpoints will be represented.

8. Through information programming, Canadians are exposed to viewpoints, ideas and opinions that inform their perspectives on local, national and international affairs and the choices they make each day. While non-information programming genres such as drama also communicate important socio-cultural values and are of significant policy interest, the primary focus in this proceeding is the editorial voice of information programming.
9. When referring to the editorial voice, the Commission considers that greater weight should be given to professional editorial voices because of the authority and credibility they bring. Such voices, for the most part, utilize trained journalists, subscribe to professional standards and codes, and provide audiences with a transparent system for resolving complaints.
10. While the Commission recognizes that the new – and largely unregulated – media constitute an increasingly important source of both professional and non-professional editorial voices, the evidence in this proceeding indicates that most Canadians still view traditional media as more trustworthy and credible. These are the voices that still have the greatest resonance.

#### **“Diversity” in broadcasting**

11. The Commission considers that the concept of “diversity” in the Canadian broadcasting system should be approached at three distinct levels: diversity of elements, plurality of editorial voices within the private element, and diversity of programming.

##### Diversity of elements

12. To ensure a diversity of voices, the *Broadcasting Act* (the Act) mandates that three elements must be represented in the Canadian broadcasting system. In particular, section 3(1)(b) of the Act, states that:

.... the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

13. At this level, it is not the number of owners that is the focus but the availability of different types of broadcasting services – each with its own distinct voice. While a diversity of individual owners is important, ensuring the availability of all three elements provides the foundation for viewpoint diversity within the Canadian broadcasting system.
14. In the Commission’s view, the Canadian broadcasting system should provide access to a diversity of voices through broadcasting services from the public, private and community elements.

#### Plurality of ownership within an element

15. Plurality within an element refers to the number of separately owned voices. Separately owned undertakings will make use of their own editorial and programming resources. In this way, a diversity of voices is preserved because no one person – no one voice – within an element has sole responsibility for choosing the programming to which Canadians can have access.
16. Plurality within the public element was not the primary focus of this hearing and will be considered during upcoming proceedings related to the Canadian Broadcasting Corporation (CBC) and provincial educational broadcasters. Plurality within the community element is addressed in section E below. The focus of the Commission in this proceeding was on the plurality of ownership within the private element.
17. Given the trend toward greater consolidation and the consequent impact on diversity of voices, a plurality of ownership in the private element is necessary in order to maximize the diversity of voices in the Canadian broadcasting system.

#### Diversity of programming

18. Diversity of programming can mean several things, such as the expression of Canadian voices amidst foreign ones, the availability of different genres and formats, or the airing of content made by a variety of producers, including independent producers.
19. Ensuring that Canadians receive programming from different sources – including content from the public, private and community elements – constitutes a significant aspect of the Commission’s mandate, including contributing to the maintenance and enhancement of national identity and cultural sovereignty. In addition, as section 3(1)(e) of the Act notes, “each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.”
20. The Commission recognizes that a plurality of ownership does not necessarily guarantee a diversity of programming in the system and that large corporate entities may have a greater ability to provide high quality news and entertainment programming. However, as the Commission heard at the Public Hearing, ownership consolidation within the private element can raise concerns about reduced local reflection, particularly in news coverage. As part of its mandate, the Commission encourages and supports content that will provide audiences with programming from a Canadian perspective and that offers local, regional and national reflection.
21. In the Commission’s view, the Canadian broadcasting system should ensure that audiences have access to a diversity of programming – especially national, regional and local content.

## **B-2 What are the Commission's objectives with respect to diversity of voices?**

22. Section 3(1)(f) of the Act states that each undertaking shall make maximum use of Canadian resources, while section 3(1)(g) sets out the expectation that the programming originated by broadcasting undertakings will be of high standard. Section 3(1)(i)(iv), the Act states that the programming provided by the Canadian broadcasting system should “provide a reasonable opportunity for the public to be exposed to the expression of differing points of view on matters of public concern.”
23. In NPH 2007-5, the Commission described its objectives for the review as follows:

... to ensure that the system provides Canadians with the greatest possible diversity of voices, including editorial voices. The Commission's policies in this regard should take into consideration the increasing integration of all elements of the system. The result should be simple, comprehensive and clearly articulated policy guidelines that will further the evolution of the system.
24. At the Public Hearing, parties made the point that the Commission should be concerned not only about the availability of a diversity of voices but also about the quality of those voices. A number of parties also argued that consolidation in the private sector may be in the public interest especially when it can be demonstrated that the result is a net increase in the availability of quality Canadian programming.
25. In light of the requirements of the Act and, as a result of the information filed and the discussions that took place at the Public Hearing, the Commission considers that its objectives for this process can be refined as follows:
  1. To provide access, within the Canadian broadcasting system, to a diversity of voices through broadcasting services from the public, private and community elements.
  2. To ensure plurality of ownership within the private element of the Canadian broadcasting system.
  3. To ensure that audiences have access to a diversity of programming – especially national, regional and local content.
  4. To ensure that any further consolidation in the Canadian broadcasting system provides a net benefit to Canadian audiences and to the creation of Canadian programming.
  5. To restrict ownership only when it is necessary to achieve the above objectives and to do so in a manner that is simple, clear and effective.

### **B-3 What is the current state of diversity and ownership plurality in Canada today?**

26. In order to consider the need for regulatory change it is necessary to assess the current state of plurality of editorial voices and diversity of programming. To this end, the Commission has examined a representative sample of Canadian markets. A total of 31 local markets were studied. They represent, in terms of revenue and audience, the largest local markets in each of the ten provinces and three territories, as well as a sample of medium and small markets in several provinces.
27. The data suggest that, within the private element, Canadians currently have access to a reasonable plurality of commercial editorial voices in most local markets. In addition, most markets are served by undertakings representing the public and community elements. In this regard, the Commission notes that while the CBC and educational broadcasters do not always provide a local service, they do provide important regional programming.
28. The Commission's statistical findings regarding the 31 Canadian local markets have been released today on its Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Industries at a glance". The Commission will continue to monitor those markets and update the associated tables as required. The list of 31 local markets may also be expanded as part of the Commission's ongoing monitoring of the plurality of editorial voices available to Canadians.

### **B-4 How should the Commission approach the issue of ownership thresholds?**

29. The evidence on the record of this proceeding and the analysis of 31 representative markets made public by the Commission today indicates that, in all but the smallest markets studied by the Commission, the three elements (public, private and community) are available and, within the private element, there is a variety of ownership in the local media.

#### **Summary of comments**

30. Many broadcasters at the public hearing questioned why the Commission should contemplate any additional regulatory action. They argued that a case-by-case approach was more suited to the large and varied Canadian market and to the rapidly changing communications industry. They also argued that the Commission has all the powers and regulatory tools necessary to ensure a proper balance between diversity of voices and other broadcasting objectives, and that this balance is best achieved through examining the details of a specific ownership transaction.
31. Other parties, including the CBC, proposed that the Commission impose new ownership thresholds in order to preserve and enhance this diversity. In particular, the following thresholds were explored at the public hearing:

- a rule that would limit the ownership by one person of all three local media (radio, television and newspapers) in a given market;
  - a rule that would limit the common ownership of broadcasting distribution undertakings (BDUs) to two per market; and
  - a rule that would limit the common ownership of specialty and pay services to approximately one-third of the analog and Category 1 licences issued.
32. Alternatively, Bell Video Group (Bell) proposed that, rather than instituting new rules with respect to ownership, the Commission should publish guidelines for the industry that set out the factors that the Commission would consider when assessing applications that may affect the diversity of voices in a market. Bell and other parties developed draft guidelines which were filed as part of the proceeding.
33. A number of parties also submitted that, in seeking to preserve and enhance this diversity, the Commission should concern itself not only with the diversity of voices available to Canadians, but also with the quality and the strength of those voices. In particular, parties alleged that consolidation of ownership had, in some cases, resulted in a decrease in the quality of news and information offered to Canadians, particularly at the local level, as well as a loss of reporting jobs.
34. Some parties also raised the issue of market dominance and the impact that large, consolidated entities have on business negotiations. Concerns included the power of dominant BDUs to negotiate with smaller independent broadcasters, as well as the power of large broadcasting groups to negotiate with national advertisers and with independent producers. In these cases, it was argued, that large consolidated undertakings have the ability to limit the diversity of programming available to Canadian audiences.

#### **Commission's analysis and determinations**

35. In the Commission's view, the question of the need for specific ownership limits to ensure diversity in the private element, whether expressed as policy, regulation or guidelines, is the central issue of this proceeding. In resolving this question the Commission must balance the flexibility requested by most broadcasters against the benefits of rules or guidelines that provide the greatest possible clarity for future transactions and that will provide reasonable assurance that Canadians will be served by a diversity of private voices on a going forward basis.
36. With respect to quality of voices, the Commission considers that any benefits related to increased consolidation in the Canadian broadcasting system should include improvements to the quality of the programming offered, including news and information programming offered at both the local and national level. The assessment of quality is, however, essentially a subjective exercise and one that a regulator should approach with caution. The Commission has the ability to measure certain key indicators of quality. These include financial commitments to produce and acquire programming, the number of hours of different categories of programming that are broadcast, and the audience that programming attracts. However, the Commission considers that any assessment of such indicators is best done at licence renewals.

37. With respect to market dominance, the Commission recognizes that, while this concern is largely an economic issue relating to questions of competition, issues of dominance also have social and cultural dimensions. The gate keeping powers that can result from market dominance may affect the diversity of programming within the Canadian broadcasting system. What is carried, what is commissioned, what is broadcast – these are all issues that intersect with the question of market dominance.
38. With respect to the most appropriate regulatory tool to express any new approach to diversity of voices, the Commission has carefully reviewed the guidelines proposed by Bell and by other parties. In the Commission’s view, it is important that all parties have a clear understanding of the Commission’s position and that its policies include an indication of the analytical framework that it will use to assess applications that raise issues related to diversity of voices.

### **C. Major issues**

#### **C-1 Is there a need for existing and/or new ownership policies to ensure a plurality of editorial voices in the private element?**

##### **Common Ownership Policy – Radio**

39. The common ownership policy for radio is set out in Public Notice 1998-41 (the 1998 Commercial Radio Policy). It states:

In markets with less than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.

For the purposes of the policy set out above, “control” means “effective control” as the latter term is defined in section 11(3) of the *Radio Regulations, 1986*.

In addition to other issues that may be raised in the context of a particular application, persons filing applications under the revised common ownership policy will be required to address the impact on diversity of news voices and the level of competition in the market.

In assessing these matters, the Commission takes into account the amount of equity (voting and non-voting) that the applicant may have in other radio stations operating in the same language in the market concerned, as well as its equity holdings in other local media.

40. In addition, the Commission’s Digital Radio Policy set out in Broadcasting Public Notice 2006-160 states “ ... the Commission will permit a person to own or control one digital radio undertaking for every analog radio undertaking permitted under the common ownership policy set out in the 1998 Commercial Radio Policy.”



## Summary of comments

41. At the Public Hearing, most parties did not propose changes to the existing levels of common ownership for radio. The Commission notes that the common ownership policy was liberalized in 1998 to support the financial health of commercial radio and, since then, the financial position of the private radio industry has been strong.
42. Nevertheless, Corus Entertainment Inc. (Corus) proposed that the Commission remove the distinction between AM and FM stations in its common ownership policy. Under this proposal, a person would no longer be limited to owning a maximum of 2 AM or 2 FM stations. Corus, supported by Evanov Communications Inc. (Evanov), also submitted that new licensees should not be permitted to sell their radio station(s) before the end of the first licence term. In the event that a licensee was unable to continue operating the station, Corus proposed that the Commission should conduct a competitive process for the transfer of the licence. The original owner would only be awarded a rebate on its original investment.

## Commission's analysis and determinations

43. The Commission considers that the Corus proposal to eliminate the distinction between AM and FM stations would amount to a substantive change to its current ownership policies. No compelling evidence was brought forward at the diversity of voices hearing to suggest the need for such a change. The Commission does not consider that any such change would result in an increase in the diversity of voices in a market. The Commission further considers that the small number of available FM frequencies in many markets makes this proposal impracticable.
44. However, the Corus and Evanov proposal to restrict the sale of radio stations during their first term of licence raises a concern with respect to diversity of voices. Increasing ownership diversity is one of the factors examined by the Commission in assessing competitive applications for new radio stations. In fact, it has been the most frequently cited factor in approving such applications. The Commission recognizes that if a licence is awarded to a new owner in a market and that owner subsequently sells to an incumbent, then the diversity of ownership voices will be reduced. These situations could damage the integrity of the licensing process.
45. The Commission is of the view, however, that a policy change is not necessary to deal with the relatively few applications for changes in the effective control of radio undertakings during the first licence term. All such applications must be approved by the Commission, and it will continue to assess each application on its merits, with due regard for the impact on the diversity of voices in the market. Matters related to licence trafficking are addressed in section D-4 of this document.

### **Common ownership policy – Over-the-air (OTA) television**

46. In Public Notice 1999-97 (the 1999 Television Policy), the Commission reaffirmed its common ownership policy, which generally permits ownership, by one person, of no more than one conventional television station in one language in a given market. The policy is designed to ensure that a diversity of voices exists in a given market, and to maintain competition in each market.
47. In cases where the Commission has granted exceptions to this policy, the rationale for these exceptions has generally rested on two elements:
  - the need to sustain strong, locally focused programming for smaller cities located adjacent to larger urban centres; and
  - the financial ability of the licensee to provide such local programming, and thus contribute to the diversity of voices, while maintaining a viable enterprise.

#### Summary of comments

48. Few parties to the proceeding commented on the common ownership policy for OTA television. Most parties who referred to the policy stated that it should be retained. Only TELUS Communications Company (TELUS) proposed that the limit be raised to two stations per market on the grounds that consolidation is necessary to achieve the scale needed to produce high quality Canadian programming.

#### Commission's analysis and determinations

49. The Commission recognizes that OTA television plays a very important role in providing a plurality of editorial voices across the country. Television newscasts, both local and national, are, for many Canadians, the primary source of information about current events related to the community, to Canada and to the world.
50. As a consequence, the Commission considers that the existing common ownership policy for OTA television must be maintained in order to ensure that a plurality of editorial voices in local markets is preserved.

### **Cross-media ownership – Radio, television and newspapers**

51. At present, the Commission has no policies or regulations that limit the number of different types of media that can be owned or controlled by a single person. Nothing prevents a single owner from controlling radio stations, a television station and local newspapers that serve the same market.

52. Starting with the *Report of the Special Senate Committee on Mass Media* (the Davey report) in 1970 and continuing with the *Royal Commission on Newspapers, 1981* (the Kent report), *Our cultural sovereignty, Report of the standing committee on Canadian heritage*, June 2003 (the Lincoln report) and the *Standing Senate Committee on Transport and Communications Final Report on the Canadian News Media*, June 2006 (the Fraser report), government studies of Canadian media ownership have all advocated clear policies to ensure that Canadians are served by widely owned news media and that excessive ownership concentration is discouraged.
53. On 29 July 1982, the Government issued *Direction to the CRTC on Issue and Renewal of Broadcasting Licences to Daily Newspaper Proprietors*, which directed the Commission to not issue or renew broadcasting licences, with certain public interest exceptions, to enterprises engaged in the publication of daily newspapers operating in the same market area. The purpose of the Direction was to foster independent, competitive and diverse sources of news and viewpoints within Canada. In 1985, this direction was revoked by a new government.
54. In 2001, the Commission addressed cross-media concerns with three television licensees. In the renewal decisions for the TVA, CTV and CanWest television stations, it imposed conditions of licence that require separation between the editorial operations of commonly owned television stations and newspapers. The conditions also set out a process for resolving any complaints arising from cross-media ownership.
55. In almost all western countries, with the exception of New Zealand, there are limitations with respect to media cross-ownership. In the U.S., the Federal Communications Commission (FCC) recently voted to introduce greater flexibility with respect to media ownership between television and newspapers. The new rules would permit this type of cross-ownership in certain clearly defined situations. The U.K. has cross-media limits in place that limit the ownership of radio, television and newspapers. France limits the ownership of media to two of the following: radio, television, newspapers and BDUs. France also has media cross-ownership rules based on audience reach. Germany employs cross-radio/television rules based on a market predominance formula, and Australia has a prohibition against a single owner controlling two of the three local media serving local markets.<sup>1</sup>

#### Summary of comments

56. At the Public Hearing, the CBC and the Canadian Film and Television Production Association (CFTPA) both proposed a cross-media ownership rule for Canada that is similar to the approach taken in Australia. Pelmorex Communications Inc. (Pelmorex) proposed an alternative approach with the end result of imposing limits on cross-media ownership, but most other broadcasters considered that limitations were unnecessary and that the Commission should continue to address concerns related to cross-media ownership on a case-by-case basis.

---

<sup>1</sup> A detailed report on media ownership in selected countries is available on the CRTC Web site at <http://www.crtc.gc.ca/eng/publications/reports/mcewen07.htm>

Commission's analysis and determinations

57. The Commission's concerns with cross-media ownership are focused on local markets. It is from the local media that most Canadians receive the information that is critical to their understanding of local, regional, national and international issues. Local media help to shape Canadians' views and to equip them to be active participants in the democratic life of the country.
58. In the Commission's view, the central objective for any policy on diversity of voices must be to ensure that Canadians have available to them a plurality of editorial voices, especially within the private element of the broadcasting system. Permitting one person to own or control all three primary sources of local media would not serve the fulfilment of this objective.
59. The Commission recognizes that, at the present time, it does not appear that any one person controls all three local media in any Canadian market. In this regard, the Commission considers that *The Globe and Mail* and the *National Post* should be considered as national, not local, newspapers. Further, for the purpose of its policies, the Commission considers that only daily, paid local newspapers should be counted.
60. The Commission also recognizes that increasing numbers of Canadians are turning to the Internet or to other forms of new media as a source of news and information. There is no doubt that the new media will become an increasingly important source of local, national and international information. However, it is equally true that the traditional media – newspapers, television and radio – are, by far, the source of the majority of the professionally produced news available on the Internet.
61. In this regard, the Commission considers that policies to ensure a plurality of professional editorial voices in the traditional media will have the beneficial effect of increasing the diversity of these voices in the new media.
62. Finally, the Commission is convinced that the trend towards ownership consolidation in the media will continue as media owners respond to continuing audience fragmentation. In the Commission's view, it is appropriate for the regulator to develop clearly articulated policies with respect to diversity of voices so that all Canadians, in addition to the regulated industries, understand the limits to media concentration.
63. In light of the above, the Commission is introducing the following policy with respect to cross-media ownership in local markets.

64. **The Commission, as a general rule, will not approve applications for a change in the effective control of broadcasting undertakings that would result in the ownership or control, by one person, of a local radio station, a local television station and a local newspaper serving the same market.**
65. Where a person that controls a local radio station and a local television station acquires a local newspaper serving the same market, the Commission will, at the earliest opportunity, require the licensee to explain why, in light of this policy, its radio or television licence(s) should be renewed.
66. For the purpose of the above policy, the following definitions will apply:

Market

The parameters of a local market will be determined using the BBM/Nielsen definition of the local radio market.

Local newspaper

A local newspaper will be defined as a newspaper that meets the following criteria:

- it is published at least five days per week;
- no less than 50% of its total circulation is within the relevant radio market;
- and
- no less than 50% of its total circulation is paid.

For the purpose of this policy, *The Globe and Mail* and the *National Post* will be considered as national newspapers in all markets.

Local radio station

A local radio station is a commercial radio station licensed to operate in a market where the licensee is expected to provide local news and information.

Local television station

A local television station is a commercial television station licensed to operate in a market where the licensee is expected to provide local news and information.

Analytical framework

67. In assessing transactions that raise concerns relating to this policy, the Commission will be primarily concerned with the preservation of a plurality of editorial voices in local markets. It will also give due consideration to other factors including:

- the number of separately owned local media serving the market;
- the size of the market;
- the majority language of the market;
- the use of new media as a source of local news and information; and
- the ownership of new media portals providing access to local news and information.

#### Policy review

68. The Commission will review, no later than 2013, information and trends with respect to the sources of news and information used by Canadians. Adjustments to this policy, if necessary, will be made at that time.

### **C-2 Is there a need for new ownership policies to ensure a diversity of programming in the private element?**

#### **Discretionary (pay and specialty) television services**

69. At present, the Commission has no policies with respect to the common ownership of discretionary television services. These services, with very few exceptions, are national in scope and operate under a regulatory framework that controls their nature of service and limits competition with services offering programming in the same genre. The Commission notes that the regulatory framework for discretionary services will be reviewed at a public hearing in April 2008.

#### Summary of comments

70. At the Public Hearing, the CBC proposed a new policy limiting common ownership of discretionary services on a going forward basis. The CBC argued that diversity of voices could be constrained if a single person were to control a disproportionate share of these services. The CBC proposed that a cap be set at 33% of licences.
71. This position was generally supported by the CFTPA, the Writers Guild of Canada (Writers Guild) and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA). The CFTPA submitted that a cap would be particularly necessary in the absence of effective terms of trade agreements with the licensees. It argued that the market power of certain large ownership groups makes it difficult for independent producers to negotiate equitable terms for their programs. Additional consolidation in this sector will only increase the imbalance in market power.
72. A group intervention from the Quebec unions and guilds filed by l'Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), Association des producteurs de films et télévision du Québec (APFTQ), Association des réalisateurs et réalisatrices du Québec (ARRQ), Société des auteurs de radio, télévision et cinéma (SARTEC) and Union des artistes (UDA) noted that discretionary services are largely controlled by big ownership groups and submitted that the Commission should license these groups as networks in order to be able to evaluate the contribution they make to the broadcasting system.

73. Several French-language broadcasters also supported increased regulatory attention to the common ownership of discretionary services. Pelmorex, TQS inc. and Cogeco inc. all noted the high degree of ownership concentration in French-language discretionary services and advised the Commission to seriously consider this reality when developing its policies. Pelmorex specifically recommended a cap in both English- and French-language markets.
74. On the other hand, the Canadian Association of Broadcasters (CAB) and English-language programming and distribution licensees were opposed to any ownership limits. They argued that there is no diversity of voices deficit in the system and that the current case-by-case approach has worked well. They noted that the CBC has not provided evidence that a cap is necessary to correct a problem. The CAB cited a variety of past Commission decisions to support its views.

Commission's analysis and determinations

75. The Commission recognizes that Canadians currently have access to a significant degree of diversity of programming through licensed discretionary services. It is also true that there is a significant concentration of ownership in this sector – particularly in the French-language market.
76. As has been noted earlier, the Commission's current regulatory framework for discretionary services ensures a diversity of programming and genres regardless of ownership. However, this framework will be reviewed shortly, and proposals have been made that regulatory restrictions on genre and nature of service be removed in favour of a more market-based approach. As a result, the Commission considers that it is premature to introduce new policies with respect to the common ownership of discretionary services at this time.
77. Nevertheless, the Commission is concerned that increased consolidation in the television sector as a whole could result in a reduction in diversity for Canadian viewers. Such consolidation could also result in increased difficulties for independent producers in negotiating reasonable terms for their programming.
78. Discretionary services now account for more hours of television viewing than OTA services and viewers may no longer make distinctions between the two types of Canadian television. Further, most of the large ownership groups in television control both OTA and discretionary services.
79. The Commission considers, therefore, that an analysis of the share of all viewing to television – including viewing to both OTA and discretionary services – will provide a useful and accurate measure of ownership diversity in television. In the Commission's view, such an approach is more revealing than examining the ownership of individual broadcasting undertakings.
80. Using BBM/Nielsen 2006/07 data, the Commission has determined that, in the English-language television market, CTVglobemedia Inc. and CanWest MediaWorks Inc. dominate the share of total hours tuned to television with a 37.4% and a 26.3% share, respectively.

81. In the French-language market, Quebecor Media Inc. (Quebecor) has a 32% share of all television viewing followed by Astral Media Inc. with 23.2% and Société Radio-Canada with 18.1%.
82. The Commission has examined the thresholds developed by the Competition Bureau for measuring competition in relation to banking services.<sup>2</sup> In summary, the Bureau set three thresholds in relation to the bank's core services:
- If the post-merger combined market share is less than 35%, the Competition Bureau will consider that the merger *will not result in a substantial lessening of competition*.
  - If the post-merger combined market share is between 35% and 45%, the Competition Bureau will consider that the merger *may result in a substantial lessening of competition*.
  - If the post-merger combined market share is more than 45%, the Competition Bureau will consider that the merger *will result in a substantial lessening of competition*.
83. The Commission considers that a similar approach is appropriate in examining the impact on diversity of voices of any change in effective control on the share of total television viewing.
84. It is important to note that the Commission will not be concerned about increases in viewing share that result from the normal competition for audiences or the introduction of new services. Concerns are only triggered when a proposed acquisition may result in a person gaining a dominant position in the television sector.
85. While the Commission recognizes that strong companies are necessary to ensure the fulfilment of the objectives of the Act, it must balance this against the negative consequences for independent producers and the impact on diversity of programming that excessive market power could bring.
86. Accordingly, the Commission is introducing the following policy with respect to the ownership of television broadcasting licences.

---

<sup>2</sup> The guidelines are available at <http://strategis.ic.gc.ca/pics/ct/ct02484e.pdf>



87. **The Commission, as a general rule, 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 would impact on the diversity of programming available to television audiences. Specifically,**
- **as a general rule, the Commission will not approve transactions that would result in the control by one person of more than 45% of the total television audience share – including audiences to both discretionary and OTA services;**
  - **the Commission 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.**
88. Audiences will be measured separately, on a national basis, for both English- and French-language markets using BBM/Nielsen data.

Analytical framework

89. In analyzing any such transaction, the Commission will be primarily concerned with preserving the diversity of programming voices in the market. It will give due consideration to factors such as:
- the regulatory framework for OTA and discretionary services;
  - the impact of the transaction on the ownership and control of discretionary services offering news and public affairs programming;
  - the effectiveness of any safeguards to ensure fair access by programming services to BDUs in cases where a BDU controls such services;
  - the existence of effective terms of trade agreements between licensees and independent producers;
  - the availability and popularity of new media platforms as a source of television programming for Canadians; and
  - the views, if any, expressed by the Competition Bureau.

**C-3 Is there a need for new ownership policies to ensure diversity in the provision of broadcasting distribution services?**

90. The Commission currently has no general policy with respect to the common ownership of BDUs serving a single market. Since the Commission licensed direct-to-home (DTH) undertakings to compete with cable BDUs, it has allowed multiple ownership of BDUs, subject to certain safeguards.

91. Specifically, in Broadcasting Decision 2002-84, the Commission approved applications to replace existing conditions of licence relating to structural separation for the Cancom satellite relay distribution undertaking and the Star Choice DTH undertaking with new conditions. The new conditions provided that each of the undertakings must maintain independent sales, marketing and customer service functions as well as staff, and require adherence to confidentiality procedures.

#### **Summary of comments**

92. In its initial submission, the CBC recommended that the Commission adopt a rule – to be applied on a going forward basis – that no person or group of persons be permitted to own or otherwise control more than two BDUs serving a single territory, and that within the Canadian market, a person should not control more than a certain portion of subscribers, such as 33%. It argued that such a rule would ensure that both programming services and BDU customers have a choice between at least two distinct ownership groups for BDU carriage or service in a territory.
93. Broadcasters generally took the position that common ownership of BDUs could be permitted subject to strict and enforceable safeguards. The CAB noted that, while common ownership of BDUs could raise concerns related to diversity of voices, such concerns would be mitigated as long as Canadian programming services have priority carriage. The CAB submitted that concerns relating to common ownership should be reviewed at the upcoming review of the Commission’s regulatory frameworks for BDUs and discretionary services.
94. Pelmorex submitted that “we are past the point of caps” and that there is a need to rely on a sound system to ensure carriage of discretionary services by BDUs.
95. The Writers Guild also advocated strengthened safeguards in the case of common ownership of BDUs rather than a specific cap on the number of licences that could be issued to a person.
96. Distributors were not supportive of the CBC proposal. For example, Shaw Communications Inc. (Shaw) stated that, rather than having fixed rules, the Commission should consider situations on a case-by-case basis. Rogers Communications Inc. (Rogers) expressed the general view that the imposition of fixed rules in a rapidly changing technological, business and consumer environment may create more uncertainty, not less. With respect to the CBC’s proposal regarding BDUs, Rogers stated that it did not believe that the Commission needs to introduce a new rule or regulation to this effect. Quebecor stated that, generally, it did not believe that the additional rules proposed by the CBC were useful or necessary and that reliance on the marketplace is the best way to ensure a diversity of voices.
97. Bell argued that the current safeguards and regulations have proven sufficient to preclude the occurrence of problems or concerns regarding common ownership of BDUs. It also suggested that additional regulatory changes can be discussed in the proceeding on the regulatory frameworks for BDUs and discretionary services.

### **Commission's analysis and determinations**

98. BDUs play an important role in ensuring a diversity of voices in the broadcasting system by acquiring and packaging programming services in ways that meet the needs of consumers and serve the objectives of the Act. BDUs that choose to offer a community channel also contribute to the plurality of editorial voices in local markets.
99. The Commission recognizes that effective competition in the distribution of broadcasting services is the most efficient way to serve consumers. An effective competitive environment would become more important should the Commission decide that the regulatory framework for BDUs should be relaxed.
100. Currently, all Canadian consumers can choose between one of two separately owned DTH undertakings and, for those living in more urban areas, a terrestrial cable undertaking. Some consumers also have access to other distribution technologies such as multipoint distribution service (MDS) and digital subscriber line (DSL) services. In addition, radio and television programming is increasingly available through the Internet.
101. It is the Commission's view that its policies should continue to foster a competitive environment for distribution undertakings, and that it should discourage any concentration of ownership that would result in a substantial reduction of effective competition in local markets.
102. In analyzing the CBC proposal, the Commission is concerned that adopting a rule that places a cap on the number of BDUs owned by any single person in a territory may, over time, limit the efficient development of new distribution technologies. Specifically, by placing the limit at two, distributors that are already at this cap would be limited from developing new, innovative distribution technologies that may have the potential for better serving subscribers. For example, under the proposed rule, a person that currently holds a cable and a satellite BDU licence would be restricted from applying for a new BDU licence that uses a new technology (such as DSL, wireless, or some other new – yet to be developed – distribution method). In the Commission's view, such a consequence could be found to be inconsistent with the policy objective set out in section 3(1)(t)(ii) of the Act, which relates to the efficient delivery of programming, using the most effective technologies available at reasonable cost.
103. In a rapidly changing broadcasting environment, the Commission's focus should be on ensuring effective competition for BDU services in local markets. The Commission is of the view that such competition will result in increased programming diversity for Canadians.
104. Accordingly, the Commission is introducing the following policy with respect to the ownership of BDUs.

105. **The Commission, as a general rule, will not approve applications for a change in the effective control of broadcasting distribution undertakings (BDUs) in a market that would result in one person being in a position to effectively control the delivery of programming services in that market. The Commission is not prepared to allow one person to control all BDUs in any given market.**

Analytical framework

106. In analyzing any such transaction, the Commission will be primarily concerned with preserving the diversity of programming voices in a market. It will give due consideration to factors such as:
- the regulatory framework for BDUs;
  - the market share of other BDU services;
  - the impact of unregulated distribution services;
  - the extent to which a transaction could change the respective negotiating power of the BDU(s) and programming service providers;
  - the impact on community channels or community programming undertakings;
  - the size of the market; and
  - the majority language of the market.

#### **D. Other issues raised in NPH 2007-5**

##### **D-1 Should the Commission make changes to its policies for ethnic and Aboriginal broadcasting to encourage diversity of voices?**

107. The Ethnic and Aboriginal broadcasting sectors consist of a variety of radio and television services by and for a range of ethno-cultural and Aboriginal communities. These services are usually in “third languages” for the ethnic sector and in Aboriginal languages as well as in English or French for the Aboriginal sector. The ethnic broadcasting sector currently includes 21 ethnic radio stations,<sup>3</sup> 6 OTA ethnic television stations,<sup>4</sup> 5 national analog specialty services and 30 launched Category 2 specialty services.<sup>5</sup> The Aboriginal broadcasting sector includes 5 television stations, 2 television networks, 46 licensed radio stations, 7 radio networks, and numerous exempt services.
108. The Commission’s policies with respect to the on-screen reflection of Canada’s diversity (i.e. Aboriginal peoples, visible minorities and persons with disabilities) in mainstream broadcasting (cultural diversity) requires television and radio broadcasters to develop appropriate strategies for ensuring that programming is reflective of the cultural diversity of the markets they serve. Licensees are required to report regularly to the Commission on their progress in the implementation of those strategies.

---

<sup>3</sup> These stations are in Montréal (4), Toronto (8), Ottawa (1), Winnipeg (1), Calgary (1), Edmonton (1) and Vancouver (5).

<sup>4</sup> These stations are in Toronto (2), Montréal (1), Calgary (1), Edmonton (1) and Vancouver (1).

<sup>5</sup> As of 31 December 2006 (Source: 2007 CRTC Broadcasting Monitoring Report)

109. NPH 2007-5 sought comments on whether increased consolidation had limited or enhanced the ability of the system to fulfil the Commission's cultural diversity objectives. It also asked whether policies to encourage minority group ownership of broadcasting undertakings should be encouraged.

#### **Summary of comments**

110. Comments at the Public Hearing can be broadly categorized under two headings: concerns with respect to minority ownership in broadcasting in a consolidated environment, and concerns with respect to the current approach to improving diverse participation in mainstream broadcasting.

#### Minority ownership in broadcasting

111. Aboriginal Peoples Television Network (APTN) submitted that working with bigger players with deeper pockets has allowed them to expand their program offerings on their own network and on other networks, such as CTV and OMNI.
112. On the other hand, some producers, including Madga de la Torre and the Canadian Diversity Producers Association argued that consolidation results in fewer doors to knock on, which limits some producers' opportunities to get programs on the air. They were generally of the view that their chances for success would be greater if the owners of some of those doors were more representative of Canada's diversity. In order to achieve this goal, they recommended that the Commission take identity into account in competitive licensing processes, using *Employment Equity Act* definitions, or to otherwise "prioritize providing licenses to people from the three designated groups who do not have mandatory carriage," as proposed by Women in Film and Television (WIFT).
113. Other parties, such as the New Canada Institute, suggested that more diverse voices are casualties of consolidation in general and that a new class of licence is required to preserve the place of smaller players and smaller voices.

#### Improving on-screen reflection of diversity in mainstream broadcasting

114. The general theme of those commenting on this issue was that, given the lack of diverse ownership, efforts being made by licensees to improve reflection of Canada's diversity in programming are necessary and positive. However, parties were of the view that more action and more accountability is required of licensees to ensure significant and sustainable improvement as a result of their current annual reporting on cultural diversity to the Commission.

## Commission's analysis and determinations

### Minority ownership in broadcasting

115. The Commission is of the view that the evidence provided at the hearing was not sufficient to demonstrate that minority applicants in competitive processes are less likely to be awarded licences on the basis of their identity. Various licensing opportunities already exist for new entrants to the system regardless of their background or identity. As stated in Broadcasting Public Notice 2002-53, Category 2 specialty services and specialty audio services were created in part to respond to the need for more services devoted to diverse communities. The Commission also continues to license over-the-air ethnic television services and commercial ethnic radio undertakings.
116. Despite consolidation in the mainstream sector, the ethnic and Aboriginal broadcasting sectors continue to grow. The current regulatory structure has continued to support these sectors in a variety of ways, such as providing various opportunities for entry into the system, streamlined licensing processes for easier access by new entrants, as well as regulatory supports for existing services.
117. **In the Commission's view, therefore, the large number of services representing the voices of Canada's ethnic and Aboriginal communities a) contributes in an important way to the diversity of voices in the broadcasting system, and b) is evidence that the present system provides numerous opportunities for diverse voices in the ethnic and Aboriginal broadcasting sectors and therefore no changes are required at this time.**

### Improving on-screen reflection of diversity in mainstream broadcasting

118. The Commission has long recognized that attitudinal barriers in mainstream broadcasting are a problem. This recognition is at the core of its requirement that mainstream licensees develop goals and strategies to address recruitment, hiring, and retention of visible minorities and Aboriginal peoples at all levels of their operations as well as to make significant improvements in the types of stories told in news and non-news programming, as well as how those stories are told (i.e., accuracy, avoidance of negative stereotypes, etc).
119. **The Commission remains of the view that it is essential that all licensees continue to make progress in improving the reflection, and thus the participation of people representing Canada's cultural diversity in all programming. Accordingly, the Commission will closely examine licensees' performance in this area at licence renewal. The Commission also notes the various industry-wide activities under way to address various systemic challenges, including the CAB's proposed Equitable Portrayal Code, on which the Commission called for comments in Broadcasting Public Notice 2007-89.**

## **D-2 Are changes to the Commission's benefits policy necessary to foster diversity of voices?**

120. NPH 2007-5 sought comments on the following questions:
- How does the Commission's benefits policy further the diversity of voices in the broadcasting system?
  - How might changes to the benefits policy increase the diversity of voices?
121. The benefits policy was created in 1989 in Public Notice 1989-109. Its purpose was to allow the market to govern the transfer of broadcasting licences as part of ownership transactions while still recognizing that the Canadian airwaves belong to the people of Canada.
122. Broadcasting licences are public property. As such, a proposed change in effective control resulting from an acquisition of assets would theoretically require that licences revert to the Commission. The Commission would then determine, on behalf of the Canadian public, which applicant best serves the public interest.
123. However, the benefits policy makes it possible for the market to govern changes in effective control of broadcasting licences while simultaneously ensuring that the public interest is still served through the allocation of a percentage of the value of the transaction to incremental spending that will benefit audiences in the market(s) served and the Canadian broadcasting system as a whole.
124. The Commission generally expects applicants to make commitments to clear and unequivocal benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission for television undertakings<sup>6</sup> and of 6% for radio undertakings.<sup>7</sup> The Commission then takes the proposed benefits into consideration as part of the application.
125. In Public Notice 1996-69, the Commission concluded that, as a result of its decision to remove "all or most of the existing licensing restrictions on market entry" and its encouragement of competition in the BDU sector, it would no longer apply the benefits test in the case of changes in the effective control of distribution undertakings. The Commission noted that benefits in these cases had been largely applied to technical upgrades and that a competitive environment would now provide further incentives for BDUs to make the necessary investments. The Commission considered that the requirement for persons controlling BDUs to contribute at least 3% of gross annual revenues to support Canadian programming would compensate for any benefits that might have previously been allocated to Canadian programming.

---

<sup>6</sup> This policy was first set out in Public Notice 1999-97 and maintained in Broadcasting Public Notice 2007-53.

<sup>7</sup> This policy was established in Public Notice 1998-41.

126. The Commission also noted in Public Notice 1996-69 that:

there will continue to be a need for restrictions on the entry into the market of new programming undertakings. Given these circumstances, and in the absence of competing applications for changes in the effective control of programming undertakings or networks, the benefits test will continue to be a central element of the assessment of such applications.

#### **Summary of comments**

127. Large broadcasters questioned the relevance and fairness of the benefits policy. They argued that they also operate in a competitive environment like BDUs, which are exempt from the obligation to provide a benefits package.
128. Smaller broadcasters, such as educational broadcasters and APTN, suggested that benefits should directly target diversity in the system by supporting independent broadcasters and independent production.
129. Community-based media groups argued that the benefits policy should be used to support community voices in the Canadian broadcasting system, noting that the community element is, by comparison, underrepresented in the system.
130. With respect to radio, some community-based media groups suggested that 1% of radio Canadian content development contributions derived from benefits should be directed to the Community Radio Fund of Canada.
131. Many parties, including broadcasters and independent producers, also commented on the importance of the benefits policy in contributing to a diversity of voices in the Canadian broadcasting system through the development of Canadian content and Canadian talent, but expressed concern about its reliability as a source of funding.
132. There was no consensus on whether or not expenditure requirements, based on a percentage of advertising revenues, would be preferable to relying on tangible benefits.
133. APTN suggested a formula for dividing benefits monies so that one-third each would go to the Canadian Television Fund (CTF); self-administered initiatives by the person involved in the transaction; and priority areas as defined by the Commission (e.g., Aboriginal broadcasting and Aboriginal production).

#### **Commission's analysis and determinations**

134. The Commission considers that the reasons for retaining the benefits test for programming undertakings set out in Public Notice 1996-69 remain valid. The Commission further notes that the appropriate contribution of distribution undertakings to Canadian programming has been identified as a matter for discussion at the upcoming review of the BDU regulatory framework.



135. As indicated below, the Commission will conduct a broad review of its policies regarding community broadcasting. This review will include an examination of sources of funding for community licensees.
136. **In light of the above, and recognizing the important contributions that benefits make to the creation and presentation of Canadian programming, the Commission has determined that it will retain its current policy with respect to benefits in the context of applications for changes in the effective control of programming undertakings.**

**D-3 How should the Commission address concerns regarding vertical integration of programming services and producers?**

137. In NPH 2007-5, vertical integration was defined as the ownership, by one person, of both programming and distribution undertakings or, both programming undertakings and production companies.
138. In the 1999 Television Policy, the Commission indicated that, where a broadcasting licensee owns or has acquired a production company, either in whole or in part, it would expect the licensee to address the issues arising from vertical integration at the time of licence renewal.
139. In the licence renewals for the major television groups in 2001 and 2002, the Commission stated that it expects licensees to ensure that at least 75% of all Canadian priority programming broadcast is produced by independent production companies. An independent production company is defined as a production company in which a television licensee owns or controls, directly or indirectly, less than 30% of the equity.
140. In Broadcasting Public Notice 2007-53, the Commission stated that it was of the view that terms of trade agreements between broadcasters and independent producers would provide stability and clarity to all concerned, and it encouraged the development of such agreements. The Commission also stated that it would expect licensees to provide draft or signed terms of trade agreements with independent producers as part of their licence renewal applications. The Commission stated that it would examine the role of independent production at the time of licence renewal.
141. In licensing new pay and specialty services in 1994 and 1996, the Commission stated that, where licensees are involved in both the production and distribution of programming, the licensee must put in place safeguards to ensure fair access by independent producers.
142. In decisions licensing the digital pay and specialty services in 2000, the Commission required each Category 1 licensee, by condition of licence, to ensure that at least 25% of its Canadian programming, other than news, sports, and current affairs, is produced by non-related production companies.

### Summary of comments

143. Those commenting on this issue generally reiterated the views set out in the 2007 review of the Commission's television policy. While broadcasters expressed a desire to exert more control over ancillary rights, the production community claimed that broadcasters' market power makes it difficult to conduct equitable negotiations over those rights.
144. Licensees in both the English- and French-language markets called for the elimination of measures that prevent broadcasters from creating content in all genres, arguing that they must be permitted to exploit rights across all platforms.
145. Conversely, representatives of both the English- and French-language production sectors and unions contended that the expectation that 75% of the priority programming broadcast by the major broadcast groups be sourced from independent producers is essential, but not enough to ensure a strong independent production sector.
146. These parties submitted that a requirement for terms of trade agreements between broadcasters and producers, a better financing model for independent production, and "more doors to knock on" (i.e., a greater diversity of broadcast players) are critical to ensuring a strong independent production sector in Canada.

### Commission's analysis and determinations

147. The Act states that the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector. In order to fulfil this objective, the Commission expects television broadcasters to acquire certain minimum quantities of programming from independent producers. In the case of OTA television, this amounts to 75% of priority programming, or 6 hours per week. In the Commission's view, this is not an onerous obligation.
148. The Commission recognizes that broadcasters consider that they must control as much programming as possible in order to be able to effectively exploit the rights for new, digital platforms. This will require negotiations with the underlying rights holders so that a fair conclusion is reached.
149. **The Commission considers that the development of effective terms of trade agreements between broadcasters and independent producers will provide stability and clarity in this area and will serve to further the objectives of the Act.**
150. **The Commission reiterates the expectation set out in Broadcasting Public Notice 2007-53 that licensees provide draft or signed terms of trade agreements with independent producers as part of their upcoming licence renewal applications. If, at licence renewal time, this expectation has not been fulfilled, the Commission may choose to arbitrate the negotiations to develop terms of trade agreements with independent producers.**

#### **D-4 How should the Commission approach issues related to licence trafficking?**

151. For the purpose of the Commission's regulatory framework, the term "licence trafficking" refers to ownership transactions involving the sale or change in the effective control of a broadcasting undertaking(s) within its first licence term or shortly after the vendor acquired the broadcasting undertaking(s) or its effective control. When examining such transactions, the Commission is concerned with the following two areas:

##### **Integrity of the licensing process**

In order to ensure that the integrity of the initial licensing process for the undertaking is not compromised, the Commission examines:

- the extent to which the licensee has attempted to implement its authority, including financial expenditures and commitments made;
- whether the undertaking is being operated in accordance with its commitments and its promise of performance; and
- whether the purchaser was a party to the competitive process at the time of licensing.

##### **Extent of profit**

The Commission examines the extent to which the vendor will profit from the sale.

152. The Commission has generally applied these principles to any changes in the effective control of broadcasting undertakings occurring during the first licence term of an undertaking or shortly following a previous sale.

##### **Summary of comments**

153. Corus, supported by Evanov, argued that no sale of radio stations should be allowed within the first licence term without the initiation of a competitive process for the licence transfer. Rogers stated that no changes to the current approach are necessary. Finally, APFTQ, ADISQ, ARRQ, SARTEC, UDA, in a joint submission, argued that gains realized through ownership transactions should be re-invested in content production initiatives across all regions of Canada and in both Anglophone and Francophone markets.

##### **Commission's analysis and determinations**

154. A broadcasting licence is a privilege that is granted as the result of an extensive public process that often involves competitive applications. The decision to award a licence to a specific person is based on the merits of the application. The decision takes into consideration the benefits that will accrue both to the Canadian broadcasting system and to those who will be served by the proposed broadcasting undertaking. Consequently, the sale of a newly licensed broadcasting undertaking brings into question the original licensing process.

155. A sale shortly following a decision to authorize a change in the effective control of an undertaking may also bring into question the Commission's decision on the original transaction, as well as the integrity of the process leading to it. As is the case in the licensing of a new broadcasting undertaking, a decision to authorize a change in effective control is based on the merits of the application. Such a decision also takes into account concentration of ownership, vertical integration, cross-media ownership and the acceptability of a proposed tangible benefits package. Ultimately, the decision that a change in the effective control of an undertaking is in the public interest is based on the resulting benefit to the Canadian broadcasting system and the public to be served.
156. **The Commission will continue to apply the general principles outlined above for any change in the effective control of a broadcasting undertaking during the first licence term or shortly following a previous sale.**

**D-5 Should the Commission address the cross-ownership of broadcasting undertakings and new media undertakings?**

157. In NPH 2007-5, the Commission noted that it currently has no policies with regard to the cross-ownership of licensed broadcasting undertakings and new media undertakings and sought comment on whether any such policies were required.
158. The Commission notes that, with regard to editorial voices, new media platforms largely offer content that was originally produced for licensed radio or television stations or for newspapers. As a consequence, the Commission's approach to ensuring a plurality of editorial voices on traditional media will also benefit the plurality of voices available on new media undertakings. In addition, the Commission recognizes the availability on the new media platforms of an enormous range of user-generated editorial content from Canadian and foreign sources.
159. **The Commission has announced that it is conducting an ongoing study, and will eventually hold a public hearing, to consider possible approaches to broadcasting by means of the Internet or wireless devices. Accordingly, the Commission is of the view, that it would be premature to consider, at this time, either a) plurality of voices, or b) diversity of programming, as they relate to new media.**

**E. The community element**

**E-1 How should the Commission address the community element in broadcasting?**

160. As noted earlier in this public notice, community broadcasting is one of the three basic elements that make up the Canadian broadcasting system. A healthy community element, strong public broadcasters and a plurality of voices within the private element provide the basis for a broadcasting system that offers Canadians a diversity of voices.

161. Canada has played a central role in the development of community media and it is considered by many to be the birthplace of community broadcasting. The community element was developed to provide local groups with access to the broadcasting system. Community broadcasting, which is local, volunteer-based and largely not-for-profit, is often able to broadcast a diverse range of voices, alternative points of view, and innovative programming ideas.
162. The Commission's policies for campus and community radio were last reviewed in 2000. These reviews resulted in Public Notice 2000-12 (the Campus Radio Policy) and Public Notice 2000-13 (the Community Radio Policy). In 2002, the Commission issued Public Notice 2002-61 (the Community-based Media Policy), which focused largely on community television.

### **Summary of comments**

163. At the Public Hearing a number of parties spoke to concerns regarding community broadcasting.
164. All of those representing community broadcasting organizations stated that improved funding is required in order to ensure a healthy community sector. The National Campus and Community Radio Association (NCRA), l'Alliance des radiodiffuseurs communautaires du Canada (ARC du Canada) and l'Association des radiodiffuseurs communautaires du Québec (ARC du Québec) all advocated a re-examination of the Commission's benefits policy in order to divert a specific portion to the community sector.
165. Several parties raised concerns that spectrum was not being reserved for the community sector at a time when spectrum availability is becoming limited. TimeScape Productions also stated that national distribution undertakings should be required to reserve spectrum for the community sector.
166. With respect to community television, Shaw submitted that the *Broadcasting Distribution Regulations* (the BDU Regulations) should be modified to allow it to offer a national community channel with the 5% of revenues that it pays for local expression.
167. St. Andrews Community Channel Inc., licensee of CHCT-TV, requested that the BDU Regulations be amended to ensure that community services receive basic tier carriage by terrestrial BDU providers.
168. Radio Ottawa Inc., licensee of CHUO-FM Ottawa, submitted that the Commission needs to develop a policy for non-commercial media that would take a more assertive position on the development of community media.

## **Commission's analysis and determinations**

169. The Commission recognizes the importance of the community element in the Canadian broadcasting system. While campus and community radio, in both official languages, is reasonably widespread, community-based television operations do not yet occupy a significant place in the system. Cable community channels remain an important component of the system but, increasingly, they have a regional rather than a local focus.
170. The cost of television production equipment continues to decline, and new distribution technologies offer cost-effective means of delivering community programming to audiences. However, stable funding to allow for the production of quality community programming remains a significant issue.
171. In this regard, the Commission notes that in June 2007 the Department of Canadian Heritage announced that it had undertaken a review of the community and campus radio broadcasting sectors. It is expected that the results of this review will be available in the Spring of 2008.
172. **In light of the record of this proceeding and the changes taking place in the broadcasting environment, the Commission has decided to undertake a comprehensive review of its policies with respect to community-based radio and television. The objective of this review will be to ensure that the Commission's regulatory policy supports the development of a healthy community broadcasting sector.**
173. This review will include, but will not be limited to,:
- the most appropriate licensing policy for community undertakings;
  - the role of new technologies in the creation and distribution of community services;
  - funding sources for not-for-profit community licensees;
  - the role, if any, of national community undertakings; and
  - the results of the Department of Canadian Heritage's review of community radio.

Secretary General

### **Related documents**

*Journalistic Independence Code*, Broadcasting Public Notice CRTC 2008-5,  
15 January 2008

*Call for comments on the public disclosure of aggregate financial data for large ownership groups of over-the-air radio and television broadcasters*, Broadcasting Public Notice CRTC 2008-6, 15 January 2008

*Call for comments on the Canadian Association of Broadcaster's proposed Equitable Portrayal Code*, Broadcasting Public Notice CRTC 2007-89, 27 July 2007

*Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007

*Diversity of voices proceeding*, Broadcasting Notice of Public Hearing CRTC 2007-5, 13 April 2007

*Call for comments on the Canadian Broadcast Standards Council's proposed Journalistic Independence Code*, Broadcasting Public Notice CRTC 2007-41, 13 April 2007

*Digital radio policy*, Broadcasting Public Notice CRTC 2006-160, 15 December 2006

*Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002

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

*New licensing framework for specialty audio programming services*, Broadcasting Public Notice CRTC 2002-53, 12 September 2002

*Campus radio policy*, Public Notice CRTC 2000-12, 28 January 2000

*Community radio policy*, Public Notice CRTC 2000-13, 28 January 2000

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

*Commercial radio policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

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

*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

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

## **Appendix to Broadcasting Public Notice CRTC 2008-4**

### **Summary of the CRTC policy framework related to diversity of voices**

#### **Common ownership policy – Radio**

##### Analog radio stations

In markets with less than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.

For the purposes of the policy set out above, “control” means “effective control” as the latter term is defined in section 11(3) of the *Radio Regulations, 1986*.

In addition to other issues that may be raised in the context of a particular application, persons filing applications under the revised common ownership policy will be required to address the impact on diversity of news voices and the level of competition in the market.

In assessing these matters, the Commission takes into account the amount of equity (voting and non-voting) that the applicant may have in other radio stations operating in the same language in the market concerned, as well as its equity holdings in other local media.

##### Digital radio stations

The Commission will permit a person to own or control one digital radio undertaking for every analog radio undertaking permitted under the common ownership policy set out in the 1998 Commercial Radio Policy.

#### **Common ownership policy – Over-the-air television**

The Commission generally permits ownership by one person of no more than one conventional television station in one language in a given market.

#### **Cross-media ownership**

The Commission, as a general rule, will not approve applications for a change in the effective control of broadcasting undertakings that would result in the ownership or control, by one person, of a local radio station, a local television station and a local newspaper serving the same market.



Where a person that controls a local radio station and a local television station acquires a local newspaper serving the same market, the Commission will, at the earliest opportunity, require the licensee to explain why, in light of this policy, its radio or television licence(s) should be renewed.

For the purpose of the above policy, the following definitions will apply:

#### Market

The parameters of a local market will be determined using the BBM/Nielsen definition of the local radio market.

#### Local newspaper

A local newspaper will be defined as a newspaper that meets the following criteria:

- it is published at least five days per week;
- no less than 50% of its total circulation is within the relevant radio market; and
- no less than 50% of its total circulation is paid.

For the purpose of this policy, *The Globe and Mail* and the *National Post* will be considered as national newspapers in all markets.

#### Local radio station

A local radio station is a commercial radio station licensed to operate in a market where the licensee is expected to provide local news and information.

#### Local television station

A local television station is a commercial television station licensed to operate in a market where the licensee is expected to provide local news and information.

#### Analytical framework

In assessing transactions that raise concerns relating to this policy, the Commission will be primarily concerned with the preservation of a plurality of editorial voices in local markets. It will also give due consideration to other factors including:

- the number of separately owned local media serving the market;
- the size of the market;
- the majority language of the market;
- the use of new media as a source of local news and information; and
- the ownership of new media portals providing access to local news and information.

### **Common ownership – Pay, specialty and over-the-air television**

The Commission, as a general rule, 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 would impact on the diversity of programming available to television audiences. Specifically,

- as a general rule, the Commission will not approve transactions that would result in the control by one person of more than 45% of the total television audience share – including audiences to both discretionary and OTA services;
- the Commission 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.

Audiences will be measured separately, on a national basis, for both English- and French-language markets, using BBM/Nielsen data.

#### Analytical framework

In analyzing any such transaction, the Commission will be primarily concerned with preserving the diversity of programming voices in the market. It will give due consideration to factors such as:

- the regulatory framework for OTA and discretionary services;
- the impact of the transaction on the ownership and control of discretionary services offering news and public affairs programming;
- the effectiveness of any safeguards to ensure fair access by programming services to BDUs in cases where a BDU controls such services;
- the existence of effective terms of trade agreements between licensees and independent producers;
- the availability and popularity of new media platforms as a source of television programming for Canadians; and
- the views, if any, expressed by the Competition Bureau.

### **Common ownership – Broadcasting distribution undertakings**

The Commission, as a general rule, will not approve applications for a change in the effective control of broadcasting distribution undertakings (BDUs) in a market that would result in one person being in a position to effectively control the delivery of programming services in that market. The Commission is not prepared to allow one person to control all BDUs in any given market.

#### Analytical framework

In analyzing any such transaction, the Commission will be primarily concerned with preserving the diversity of programming voices in a market. It will give due consideration to factors such as:

- the regulatory framework for BDUs;
- the market share of other BDU services;
- the impact of unregulated distribution services;
- the extent to which a transaction could change the respective negotiating power of the BDU(s) and programming service providers;
- the impact on community channels or community programming undertakings;
- the size of the market; and
- the majority language of the market.