



Broadcasting Decision CRTC 2011-585

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Route reference: 2011-408

Ottawa, 14 September 2011

Glassbox Television Inc., on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc.

Across Canada

Application 2011-0797-0, received 6 May 2011

AUX TV, BITE Television and travel + escape – Change of effective control

*The Commission **approves**, subject to certain conditions, an application by Glassbox Television Inc. (Glassbox), on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc. for authority to effect a change in the effective control. As a result of the transaction, Blue Ant Media Inc. will exercise effective control of both Glassbox and 7506465 Canada Inc.*

The application

1. The Commission received an application by Glassbox Television Inc. (Glassbox), on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc., for authority to effect a change in the effective control through a multi-step transaction. As a result of the proposed transaction, Blue Ant Media Inc. (Blue Ant) would acquire all of the issued and outstanding shares of Glassbox from its various shareholders.
2. Glassbox is the licensee of the national, English-language specialty Category B services known as AUX TV and BITE Television (BITE). It is also authorized to operate two other Category B services that are not yet in operation: CURV TV and TREK TV. In addition, Glassbox is the parent company of 7506465 Canada Inc., licensee of the national, English-language specialty Category A service known as travel + escape.
3. Glassbox is owned by a large number of shareholders and controlled by its board of directors. Effective control of Blue Ant is exercised by Mr. Michael MacMillan by way of the special shares he holds and the powers attached to these shares in accordance with Blue Ant's unanimous shareholders' agreement.
4. The proposed transaction would be effected through the following steps:

Step 1: Blue Ant acquired, on 8 April 2011, 28.9% of the voting shares in Glassbox.

Step 2: Blue Ant would purchase treasury shares to increase its voting equity to 37.8%.

Step 3: Blue Ant would purchase additional voting shares in Glassbox owned by certain shareholders, which in turn would become shareholders in Blue Ant. Blue Ant's voting equity would increase to 84.3%.

Step 4: Remaining shareholders could convert their shares for shares in Blue Ant.

Interventions

5. The Commission received two interventions in support of the application, an intervention opposing the application and a comment. The interventions and the applicant's reply to the interventions can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. The Canadian Media Production Association, the Writers Guild of Canada and the Alliance of Canadian Cinema, Television and Radio Artists together with the Canadian Federation of Musicians all submitted that they support the application but raised some questions regarding the proposed tangible benefits package.

Commission's analysis and determinations

7. After examining the application in light of applicable regulations and policies and taking into account the interventions received, the Commission considers that the issues to be addressed in its determinations are:
 - the value of the transaction; and
 - the proposed tangible benefits.

Value of the transaction

8. Because the Commission does not solicit competing applications for authorization to change the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.
9. The applicant submitted that the total purchase price for all of the assets to be \$32.5 million, of which \$10 million is assigned to travel + escape and \$5 million is assigned to each of AUX TV and BITE. The remaining value is attributable to unregulated assets.
10. The Commission is of the view that the approach used by the applicant to determine the purchase price to be allocated for each of the broadcasting services is reasonable. In accordance with its practice, the Commission included assumed leases for all assets, including unregulated ones, in the value of the transaction. The value of the leases is \$1.6 million.

11. The Commission determines that the value of the transaction for the purpose of calculating the tangible benefits is \$34.1 million. Of this value, based on the applicant's allocation percentage of the purchase price, \$10.5 million is allocated to travel + escape and \$5.2 million for each of AUX TV and BITE.

Proposed tangible benefits

12. As set out in Public Notice 1999-97, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of a transaction, as accepted by the Commission. Such benefits should be incremental in nature and be directed to the communities served and to the broadcasting system as a whole. In addition, tangible benefits expenditures for all television assets should be:

- directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction; and
- generally flow to third parties, such as independent producers.

AUX TV & BITE

13. Based on the revised value of the services set out above, the Commission determines that the associated tangible benefits for BITE and AUX TV are \$1.04 million: \$520,000 for BITE and \$520,000 for AUX TV. Glassbox proposed to allocate this amount to the Multiscreen Fund initiative. The applicant confirmed that the tangible benefits would be expended over a seven-year period and that no administrative fees would be charged against the benefits. The Commission is satisfied with this proposal.

travel + escape

14. In Public Notice 1999-97, the Commission stated that it considers existing benefit commitments to be part of a licensee's obligations and, as such, they should be implemented regardless of any subsequent ownership change. In this regard, Glassbox acquired travel + escape in 2010 (Broadcasting Decision 2010-792) and committed to allocate a tangible benefits package totalling \$1 million over seven years. In the present application, the applicant confirmed that the commitments it had made with respect to that tangible benefits package will be fulfilled.
15. With respect to the current transaction, based on the revised value of travel + escape of \$10.5 million, the Commission determines that the associated tangible benefits for this service are \$1.05 million. The applicant argued that since the previous transaction involving this service took place only six months from the date of the present transaction, it should not be required to pay new benefits for this service. It noted that the payment of the tangible benefits from the previous transaction has not even started yet, nor has the operation of travel + escape yet exited the Transitional Services Agreement through which it continues to be operated, under contract, by its former owner.

16. As a precedent for its request, the applicant cited the acquisition of CKNU-TV Fraser Valley and CIIT-TV Winnipeg by Christian Channel Inc. (CCI).¹ The applicant argued that the Commission could have ordered CCI to pay additional benefits, but instead recognized the hardship it would cause to an unprofitable independent undertaking and noted that the purchaser already had significant tangible benefits flowing from a previous acquisition. The applicant added that, in the event that the Commission determines that new benefits are payable for travel + escape, it would pay the required benefit amount in a manner similar to that of AUX TV and BITE.
17. The Commission has considered the applicant's argument that no new benefits should be imposed. However, it is the Commission's long-standing approach to impose benefits on each transaction regardless of the length of time elapsed between transactions. Furthermore, the Commission considers that the precedent described by the applicant is not comparable to the current application, as travel + escape is profitable and, as a Category A service, it cannot be considered under the exemption policy for small market conventional television stations, as was the case in the CCI transaction. The Commission therefore finds it appropriate to require the applicant to pay new tangible benefits for travel + escape in the amount of \$1.05 million.

On-screen programming

18. The Commission's general approach is to have the majority (approximately 85%) of the tangible benefits package be directed to on-screen programming. In this context, the applicant proposed that all monies would go to on-screen programming initiatives consisting of multiplatform productions in music and comedy genres designed for prime-time exhibition. The Commission is satisfied with this proposal.

Cap on new media standalone projects

19. In Broadcasting Decision 2011-163, the Commission approved an application by BCE Inc. (BCE) for authority to change the effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries. In that decision, the Commission directed BCE to ensure that no more than 10% of the benefits dedicated to independently produced programs of national interest (PNI) will be spent on online or multiplatform content. With respect to its application, the applicant asked the Commission not to impose a cap on either its new media standalone initiatives or on new media projects linked to a broadcast program.
20. In keeping with the recent determinations regarding BCE's tangible benefits package set out in Broadcasting Decision 2011-163, and the approach taken in Broadcasting Decision 2010-833 with respect to certified independent production funds, as well as the approach taken by the Canadian Media Fund, the Commission considers it appropriate, as a condition of approval, to direct the applicant to revise its tangible benefits package to ensure that no more than 10% of the benefits will be spent on online or multiplatform content.

¹ See Broadcasting Decision 2008-71.

Independent production

21. In its application, the applicant proposed to direct:

- 100% of the benefits funds for AUX TV and BITE to independent production; and
- 50% of the benefits funds for travel + escape to independent production and 50% to its in-house production departments.

22. In its reply to the interventions, the applicant pointed out that the overwhelming proportion of benefits has already been assigned to independent producers, notwithstanding the fact that AUX TV, BITE and travel + escape are not drama- or PNI-oriented services. It added that this breakdown would amount to an overall 75% of the benefits going to independent producers.

23. The Commission accepts the applicant's proposal and notes that this will still ensure that the majority of the benefits flow to third parties, while allowing some flexibility to the licensee. Further, this flexibility is consistent with the Commission's approach in the group-based licence renewals for English-language television groups with respect to PNI.

Deferral of benefits payments and calculating incrementality

24. In its application, the applicant originally proposed to defer the payment of all of the benefits described above for one year. However, after considering points raised by interveners, the applicant acknowledged that there was some urgency attached to starting the benefits payments immediately, notwithstanding their relatively small size and agreed to start the payments upon approval of the application.

25. With respect to calculating incrementality, the Commission's policy requires that tangible benefits be over and above the other financial obligations that the licensee would otherwise be required to fulfill under its licence, such as Canadian programming expenditure (CPE) requirements. In the case of Category B services, the Commission's practice has been to use the average of a service's last three years of expenditures on Canadian programming as the baseline for calculating incrementality.

26. In its application, the applicant argued that the Commission should not use its usual method for calculating incrementality since it would result in a baseline that is far too high for the Category B services AUX TV and BITE. Instead, in its reply to the interventions, the applicant made a number of different proposals for calculating the incrementality of benefits. The Commission considers that the proposal consisting of calculating the baseline for the incrementality of benefits based on a benchmark using the CPE of comparable Category B services to be the most appropriate with some adjustments. For AUX TV, the applicant suggested that MuchLoud, MuchMoreRetro, MuchVibe and PunchMuch could be used as comparable services. For BITE, the applicant noted that there are no directly comparable services, and it therefore suggested using the CPE levels of 15 Category B services renewed in the recent

group-based licence renewal. The applicant estimated that the average CPE levels would be 1% for the services comparable to AUX TV and 11% for the services comparable to BITE.

27. In the Commission's view, for the purpose of calculating the incrementality of the benefits, the selection of comparable services is very subjective and in this case would result in CPE levels that are too low in comparison to most other Category B services as well as to the current CPE levels of AUX TV and BITE. The Commission is concerned that approval of such a proposal could significantly reduce or negate the value of the proposed benefits. The Commission notes that the average CPE level for all Category B services in the 2009-2010 year was approximately 15%, a level that is already considerably lower than the past CPE levels of AUX TV and BITE. Accordingly, the Commission considers that using the 2009-2010 average CPE level for all Category B services (15%) to calculate incrementality is appropriate.

Conclusion

28. In light of the above, the Commission **approves**, subject to the **conditions** set out in paragraph 29, the application by Glassbox Television Inc., on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc., for authority to effect a change in the effective control through a multi-step transaction that will result in Blue Ant Media Inc. acquiring all of the issued and outstanding shares of Glassbox and exercising effective control.
29. The Commission requires the applicant to file, within 30 days of this decision, a revised tangible benefits package that includes the revisions to the package set out in the appendix to the decision. The Commission also requires the applicant to adhere to the payment schedule set out in the appendix to this decision and to submit annual reports to the Commission by 30 November of each year, detailing its progress in fulfilling its tangible benefits.

Secretary General

Related documents

- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Decision CRTC 2010-833, 9 November 2010
- *travel + escape – Corporate reorganization (acquisition of assets), and transfer of ownership and control*, Broadcasting Decision CRTC 2010-792, 26 October 2010
- *Acquisition of assets*, Broadcasting Decision CRTC 2008-71, 25 February 2008
- *Building on success - A policy framework for Canadian television*,

Public Notice CRTC 1999-97, 11 June 1999

**This decision is to be appended to each licence.*

Appendix to Broadcasting Decision CRTC 2011-585

Conditions of approval

The applicant must file, within 30 days of this decision, a revised tangible benefits package that includes the revisions set out below.

The applicant is required to adhere to the payment schedule set out below and to submit annual reports to the Commission by 30 November of each year, detailing its progress in fulfilling its tangible benefits.

Revised tangible benefits package (\$2.09 million)

Outstanding benefits

travel + escape (2010)

\$1,000,000 allocated as follows:

- \$150,000 (15%) social benefits
- \$850,000 (85%) on-screen benefits

AUX TV & BITE Television benefits (2011)

\$1,040,000 [*revised*] allocated as follows:

- **\$520,000** for BITE Television (**\$74,286** annually over 7 years)
- **\$520,000** for AUX TV (**\$74,286** annually over 7 years)

travel + escape benefits (2011)

\$1,050,000 [*revised*] (**\$150,000** annually over 7 years)

Independent Production

- 100% of the benefits funds for AUX TV and BITE Television shall be directed to independent production.
- A minimum of 50% of the benefits funds for travel + escape shall be directed to independent production and the remainder to its in-house production departments.

On-screen programming

- All monies would go to on-screen programming initiatives consisting of multiplatform productions in music and comedy genres designed for prime-time exhibition.

Multiplatform content

- No more than 10% of the funds for the creation of programming may go toward online or multiplatform content.