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September 30th, 2010

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

RE: Application by Shaw Communications Inc. (2010-0550-5), final written comments on Shaw's revised benefits proposal

Dear Mr. Morin,

1. The DOCUMENTARY ORGANIZATION OF CANADA | L'ASSOCIATION DES DOCUMENTARISTES DU CANADA (DOC) would like to thank the Commission for the opportunity to provide these final written comments regarding the aforementioned notice of consultation, and testimony of Shaw Communications Inc. during the September 2010 hearing.
2. DOC is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit arts service association representing over 800 directors, producers and craftspeople in the documentary community, from all provinces and regions of our nation. The association advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.
3. In light of last week's developments at the hearings, DOC would like to reiterate its concerns regarding the transaction. In particular, our comments address:
 - a) The revised benefits package
 - b) The corporate separation of Canwest and Corus
 - c) Terms of trade and vertical integration.

Shaw's Revised Benefits Package:

4. DOC acknowledges Shaw's revisions of its benefits package and views these revisions as beneficial to the production community. Nevertheless, we still consider the proposal problematic for the following reasons: it continues to exclude an important element of the production community by not investing in documentary; the proposed value of the benefits package still does not represent the full 10% of the transaction value; clarity is still needed on issues of implementation.

Uneven support across the production community

5. With this purchase, Shaw will have the largest share of the CMF's English documentary envelope, and the most watched documentary specialty channels. Given these business advantages, we fail to understand why an entire segment of the broadcasting market is omitted in the benefits package and why Shaw's intention is to direct its benefits package towards the creation of "the next great Canadian comedy show". By targeting its investment towards one genre, Shaw ignores its other assets, most notably documentaries.

6. It is worthwhile to note that when Canwest constructed the Alliance Atlantis benefits, it took into account the documentary assets it was purchasing. It created benefits that would serve the entire documentary community (the Hot Docs funds), and also its documentary channels (the Feature-length programming initiative). These benefits continue to aid the documentary production industry, and have created value for Canwest.

7. In addition to being a genre designated as deserving of support by the CRTC by virtue of its programming of national interest regime, documentary remains an important element of the TV offering. In 2008-09, 14.6 million hours of Canadian documentaries were viewed. Moreover, when given the option, Canadian audiences choose Canadian documentaries: 67% of all documentaries viewed in Canada are Canadian. By investing in the creation of more Canadian documentaries, more viewers will turn to Shaw's properties for documentary content.

8. In a cross-platform environment, documentaries also do quite well. Since its launch in January 2009 to June 2010, the NFB screening room has had over 3 million views. As for Canwest's documentary content online, Canwest's History Channel online-video portal has had over 1.3 million views from Sept 2009 to June 2010. If Shaw intends to capitalize on digital media, documentary content is well suited to the digital revolution.

9. Supporting and exhibiting documentary content on a vertically integrated communications company could also attract festival-going audiences. Documentary festivals are multiplying and their attendance is climbing. Canada's two English documentary festivals have had increasing audiences every year with Hot Docs' annual attendance reaching an all time high of 136,000 people. Since its launch, DOXA's audience has grown an average of 40% every year. Clearly, the Canadian public has a robust appetite for documentary content.

10. If Shaw were to revise its benefits package, we believe that the company would have the opportunity to step into a leadership position in digital media while strengthening the entire production sector.

The 10% principle

11. In its revised benefits package, Shaw increased the value of the benefits to 8.8% of the total transactional value. Although Shaw argues that there is no set policy that says the purchaser must pay 10% of the transaction value, Public Notice 1999-97 states that:

"The Commission will generally expect applicants to make commitments to clear and unequivocal benefits representing a financial contribution of 10% of the value of the transaction. This policy will apply to any application filed on this date or after."

12. Over the last 10 years, the Commission has only twice relieved parties of their obligations towards a benefits package because of the concern it would apply too much financial strain to fulfill them. By offering \$2 billion to acquire Canwest's television services it seems improbable that Shaw's ability to fulfill its obligations is beyond the company's means. Which begs the question should these parties have acquired the services to begin with. DOC sees not clear compelling reason to relieve the purchaser of its regulatory obligations.

13. Furthermore, DOC is concerned about the precedent this might set for future acquisitions. Should this transaction go ahead as is, other purchasers will cite this case when defending smaller and smaller benefits packages. The result of which would be less and less support for Canadian programming initiatives, which "benefit audiences in the market(s) served and the Canadian broadcasting system as a whole."# When the Commission instituted the practise of benefits package, it did so to strengthen and support the Canadian broadcasting system as a whole. Documentary production is an integral part of that broadcasting system.

14. The total value of the transaction amounts to \$2 billion and it is DOC's opinion that Shaw should not be able to claim intangible benefits to replace the extra \$20 million in owed tangible benefits. The remaining benefits monies should be allocated to third parties especially in light that the majority of the benefits will flow back to the purchaser.

Is the benefits package truly incremental?

15. When questioned about the benefits package implementation, the panel was vague in describing its execution plan. And, as a result, the Commission has asked Shaw to draft an execution plan on how it would pay out the benefits year by year.

16. In order to afford much needed stability in the production system, well planned and strategic implementation is necessary, as poorly planned benefits packages will create disruption to the acquisition process, the broadcasting and production community.

Corporate separation means each broadcaster provides a licence fee

17. When pressed by the Commission to explain how it would operate Canwest and Corus competitively, Shaw stated that it would not allow any programming to be broadcast on both services. This indicates that there would be complete corporate separation. However, Shaw pointed to singular cases where broadcasters team up and both contribute. The example provided was CBC and Movie Central jointly investing in a feature-length program. DOC agrees that they should have the ability to team up with other broadcasters, but as would be the case with any other two corporate entities, that a separate licence fee be paid by each corporate entity.

18. In the last 3 years, broadcasters belonging to the same corporate groups have created cross-service licences wherein a producer receives one licence fee for a program, but where the program is exhibited on multiple channels in the corporate group. Before these cross-service licences existed, producers would negotiate 2 separate licences for 2 separate broadcasting windows from the same corporate group.

19. However, now that Shaw will own two corporate groups, it is essential that the Commission create safeguards so that it doesn't create cross-service licences between its two corporate groups. DOC proposes that the Commission create a condition of licence for the acquisition wherein if Canwest and Corus both work together on a program, they both must

provide market-value licence fees. This would insure that producers are fairly compensated while Shaw's broadcasting corporate groups can team up to create programming.

Terms of Trade and Vertical Integration

20. The recent trend of vertical integration of media companies gives these conglomerates greater market power than ever before, making terms of trade essential. Fair and equitable terms of trade between producers and the broadcasters must be established before the upcoming licence renewals. DOC recommends that the Commission maintain its position by rejecting any broadcaster licence renewal application without a fair and equitable terms of trade agreement attached.

Conclusion

21. We urge the Commission to take the above into consideration when evaluating Shaw's revised benefits package. We would like to thank the Commission for this opportunity to provide these final comments and hope that our input is helpful.

Sincerely,

A handwritten signature in black ink, consisting of a horizontal line followed by stylized, cursive letters that appear to be 'JCH'.

John Christou
Chair

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