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January 11th, 2011

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

RE: Application by BCE Inc. (BCE), on behalf of CTVglobemedia Inc. (CTVgm) and its licensed broadcasting subsidiaries, for authority to change the effective control of CTVgm's broadcasting entities to BCE.

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 comments regarding the aforementioned notice of consultation. DOC tentatively supports the application of BCE to acquire CTVglobemedia Inc with the provision that BCE pay the full amount of the benefits package and that it redesigns the package to support the broadcasting community, namely independent producers and the social, and industry associations.
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. DOC 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.

DOC's position on benefits.

3. BCE's reacquisition of CTVgm is the last major acquisition towards complete vertical integration of the major Canadian broadcasting groups. Following this purchase, all major broadcasters will be owned by integrated broadcasting or telecommunications companies. Programming will move seamlessly between different devices and the Canadian public will have the opportunity to see more Canadian stories. The success of this new environment depends on the health of the entire broadcasting community, not simply the infrastructure.
4. When placed into the broader context of benefits policy, BCE fails to recognize the purpose of benefits. According to the Commission in CRTC BPN 1993-68:

“In the absence of a competitive process, application of the benefits test remains the best method of ensuring that applications for transfer of control or ownership are the best possible proposals under the circumstances, and are beneficial to the public served by the undertakings and to the Canadian broadcasting system as a whole.”¹

The Commission’s policy is clear. The benefits test exists to ensure that the purchase is beneficial to the public, and the Canadian broadcasting system as a whole.

5. The absence of tangible benefits, or the currently proposed benefits package are both breaches of benefits policy, because they are not beneficial to the public and the broadcasting system as a whole. They do not flow to third parties, but rather to the improvement of the infrastructure of BCE’s broadcasting distribution services.
6. This is the second instance in a matter of months where a company has balked at paying benefits while strengthening their foothold in the Canadian broadcasting system. This disengagement towards the benefits policy is worrisome, especially when the Canadian broadcasting system is undergoing vertical consolidation. Broadcasting distribution undertakings are the new owners of the broadcasting system, and as the complete vertical integration of Canada’s major broadcasting assets looms large, the production community needs to be assured that owners support the independent production community who provide them with content.
7. For the last 10 years, programming benefits were based on numerous decisions and regulations set out by the Commission. In particular, the Commission linked benefits policy to the current television regulation, the priority programming regime described in BPN 1999-97. Today, there are new regulations designed to support under-represented programming: the programming of national interest regime (PNI). Similar to the priority programming regime, the new television regulations also included a section on tangible benefits thresholds:

“It is the Commission's preliminary view, subject to further discussion at the time of licence renewals, that the spending requirements for programs of national interest will be reasonable thresholds on which to base the incrementality of tangible benefits.”²

8. However, unlike the priority programming regime, the new benefits policy outlined in 2010-167 did not come into effect immediately. Nevertheless, it does invite questions regarding the Commission’s position on the role of the benefits in the new television regime. Following the creation of the

¹ CRTC BPN 1993-68

² CRTC BRP 2010-167, paragraph 80

Canada Media Fund, the Commission ended its consultations on revising benefits policy. Given the recent technological, ownership, and regulatory changes, DOC wonders whether the current benefits policy adequately addresses the needs of the various parties that make up the broadcasting community.

9. Since the year 2000, ownership has become increasingly concentrated in fewer and fewer hands. Over the next decade, or even five years, it will be unlikely that this trend will continue, given the current diversity of voices regulations. This would mean that the current benefits packages would expire and cease to be a way that the broadcasting community is tangibly supported by the industry. In the absence of benefits, new mechanisms would need to be designed to maintain the principles and goals of the Broadcasting Act. However, today, benefits packages provide support to every level of the broadcasting community. In this acquisition, the absence of benefits would negatively impact the industry today, and seven years into the future.

The application.

10. BCE has applied to transfer effective control over CTVgm's broadcasting entities to BCE. BCE will purchase the remaining 85% of the shares (40% of the voting shares) owned by 1565117 Ontario Limited (a corporation controlled by Mr. Kenneth R. Thomson), Ontario Teacher's Plan Board (25% of the voting shares) and Torstar Corporation (20% of the voting shares).
11. In its application, BCE argues that its acquisition has many intangible benefits for the Canadian consumer. CTVgm's programming will be part of a vertically integrated 3 screen programming initiative. BCE will maintain the long term viability of the CTV conventional stations. Next, the unfulfilled benefits of previous acquisitions will be paid. Finally, CTVgm will become one unified journalistic voice. For these reasons and others, BCE believes that its acquisition of CTVgm would be beneficial for the broadcasting community. However, it argues that this acquisition is a simple reorganization of assets and that, consequently, it is not bound to pay benefits a second time.
12. In BNC 2010-926, the Commission has highlighted numerous issues to discuss regarding BCE's application, including:
 - o Ownership;
 - o The value of the transaction;
 - o The proposed benefits package.
13. DOC wishes to provide its input on the last two items of discussion namely, the value of the transaction, and the proposed benefits package.

BCE's position against paying benefits.

14. BCE argues that it should not have to pay benefits because:
 - o BCE never stopped being the majority owner of CTVgm;
 - o BCE's purchase of CTVgm was approved by the Commission in 2000;
 - o If BCE had to pay benefits, it would be inconsistent with policy.
15. BCE argues it has retained control and effective ownership of CTVgm in spite of divesting itself of 85% of its ownership over the last 10 years. BCE's co-ownership deal with Woodbridge meant that it could only sell or exchange its shares with BCE. Because Woodbridge never divested any of its shares, and remained at 40% ownership of CTVgm, BCE argues that it and Woodbridge have always remained majority owners. BCE states that the current transaction is simply a reorganization of the ownership structure to move back into a position of complete control of CTVgm.
16. Furthermore, BCE interprets the payment of benefits as the replacement of the competitive process to determine ownership. BCE believes the approved benefits package is the CRTC's sign of approval of the purchase. BCE argues that it should not be compelled to offer another benefits package because its purchase of CTV Inc. was approved in 2000, and that a benefits package was paid at the time.
17. Finally, BCE points out that if it were to pay benefits on this transaction it would be inconsistent with the Commission's benefit policy. According to BCE, it was always the effective owner of CTVgm, and thus, because there is no change in ownership, it should not have to pay benefits. BCE argues that if the Commission chooses to make BCE pay benefits once more, the Commission would be creating new policy specifically for this acquisition, which the Commission does not favour doing as the Commission would rather not alter its policy based on a particular instance.

DOC's response to BCE's arguments

18. The Commission approved BCE's acquisition of CTV Inc. in 2000 under a specific set of circumstances. Now, BCE is reacquiring CTVgm at the cusp of a new era in Canadian broadcasting. DOC trusts the Commission will recognize the reason for this acquisition, and how it differs from a simple corporate reorganization.
19. DOC finds BCE's argument regarding its ownership of CTVgm puzzling. If BCE effectively owns and operates CTVgm by only owning 15% of its shares, it is a mystery why it would need to purchase the remaining 85% in order to control it. Currently, BCE shares control with the Ontario Teacher's Plan Board, the Torstar Corporation, and Mr. Kenneth Thompson; each shareholder has representatives on the board of CTVgm. How can BCE claim to operate or own CTVgm when it shares power with these other shareholders? Through the purchase of the remaining 85%, BCE would no longer share power, and it would own 100% of the company. Clearly,

CTVgm is not undergoing a corporate reorganization, but a massive shift in ownership, leadership, and control.

20. Benefits are paid when there is a change in effective control of a broadcasting asset. BCE is applying to acquire effective control of CTVgm, and it is DOC's position that it should therefore pay benefits.
21. When BCE purchased CTV Inc. in 2000, it paid \$220 million in benefits. DOC acknowledges the ongoing support this has provided to the broadcasting community. It is BCE's belief that this prior benefits package demonstrates the Commission's approval of it as the owner of CTV Inc. and that it is somehow dispensed from having to pay any more benefits.
22. Although the CRTC did approve BCE's purchase of CTV Inc. 10 years ago, it does not infer that BCE does not have to be reevaluated as a potential owner of CTVgm. The Commission must assess BCE's commitments to the broadcasting industry in the context of today's market. In the last 10 years, almost every element of the broadcasting environment has changed. Vertical integration is the norm, and no longer the exception. There are fewer and much larger broadcasting corporate groups. The Commission's broadcasting and distribution regulations have changed. Audiences consume content differently and on a variety of platforms.
23. CTVgm and BCE are much different companies as well. They own new assets, and have developed new infrastructure. Some of their assets are weaker, and some are stronger. BCE is acquiring CTVgm because it sees a business opportunity.
24. While BCE was divesting 85% of CTV Inc. to various investors over the last 10 years, it was not in the position to effectively own and operate CTV Inc. In 2006, when the Commission let Woodbridge, the Teacher's Pension Plan Board, and Torstar purchase 80% of BCE's shares, BCE was able to sell off its assets in order to realign its business. While the benefits of this business decision accrued to BCE, the broadcasting community in contrast, gained nothing. With this transaction, all the shareholders will benefit, but the Commission should be mindful that the transaction should be beneficial to all stakeholders as well.
25. In its final argument, BCE states that if it had to pay benefits on this acquisition, this would be inconsistent with benefits policy, and consequently, the Commission would be creating new policy. DOC understands benefits policy to be a replacement for the competitive process wherein multiple companies try to show their commitments to the Canadian broadcasting system. The former system was abolished and replaced with benefits policy for the sake of creating flexibility for purchasers to create the best and most viable deals.
26. BCE is trying to bypass the usual competitive purchasing process in addition to shying away from its responsibilities towards the broadcasting

community. It is the worst of both worlds. If broadcasting acquisitions are only to be judged on the basis of financial viability, and not on the larger impact to the entire broadcasting community, then the larger companies will dominate thereby creating an anti-competitive atmosphere. This is not the aim of benefits policy.

The current benefits package is inadequate and does not serve the broadcasting community as a whole.

27. At the Commission's insistence, BCE submitted a benefits package and DOC shares many of the Commission's concerns about the proposal. It is shortsighted of investors not to understand the merit and value of designing benefits package that contribute to the overall economic health and competitiveness of the broadcasting ecosystem. Furthermore, it is worrisome to see that prospective buyers appear to want to skew benefits packages to their advantage.
28. In regards to BCE's proposed benefits package, DOC would like to see the following:
 - That it respect the industry accepted standard of being worth 10% of the total transaction amount;
 - That it adhere to the principles that 85% of all benefits flow to on-screen programming and 75% of those benefits go to independent producers;
 - That there be greater clarity about the on-screen benefits and their impact on independent production;
 - That infrastructure improvements for BCE's satellite, DTV transition, and HD broadcasting services be removed;
 - The benefits package should include social and industry benefit.

BCE's benefits package should be 10% of the total value of the purchase.

29. When the Commission requested for BCE to clarify the valuation of its benefits package, BCE pointed to the manner in which conventional stations have been valued in past acquisitions. BCE argued that because Shaw only had to pay 5% of the benefits for the conventional stations, BCE should be allowed to make the same valuation for CTV Inc. and the /A\ channel stations. Furthermore, BCE stated that the purchasers of smaller stations such as CHCH, the JoyTV stations, and CFCF did not have to fully value or include the costs of these stations in their benefits packages.
30. Unlike the employees' acquisition of CHCH, and the acquisition of JoyTV, BCE is not purchasing stations that are in deep financial trouble. Although the /A\ channel family of stations are not deriving large revenues, they cannot be compared to the JoyTV stations or the other smaller acquisitions.
31. DOC was displeased that the Global TV stations were valued at 5% for Shaw's benefits package, and does not believe that BCE should be granted a similar dispensation. Canwest had entered bankruptcy protection. CTVgm

can continue to operate profitably without BCE. The financial burden that was recognized in Shaw's acquisition of Canwest does not exist in this case. The CTV conventional stations should be fully valued at 10%.

32. For the broadcasting community, the missing \$100 million in benefits would be a significant loss. To put \$100 million in perspective, Canada's production funds invest millions of dollars towards independent production. Many use \$100 million in a single year, while others with smaller budgets contribute that amount over many years. In 2008-09, BDUs and satellite companies contributed \$100 million to the Canada Media Fund. \$100 million amounts to the total funding of the Bell Broadcast and New Media Fund for the last 10 years (1999-2009, includes BCE's \$10 million top up in 2000). Since 1986, the Harold Greenberg Fund has contributed almost \$73 million to production. From 1991 to 2008, the now defunct Canadian Independent Film and Video Fund distributed \$17.9 million in funding which triggered \$190 million in production. Clearly \$100 million can go along way for the Canadian independent production community.
33. \$100 million is also the sum of previous benefits packages as BCE knows only too well. In 2000, BCE designed a benefits package where \$100 million of the \$220 million package provided funding for:
 - o 13 organizations and non-programming social initiatives;
 - o 2 Canadian documentary industry initiatives;
 - o 35 hours of documentary programming;
 - o 35 hours of ongoing dramatic series;
 - o 21 hours of music and variety;
 - o 56 hours of other priority programming;
 - o and the creation of 6 news bureaus across Canada for the Aboriginal People's Television Network.
34. Surely, when properly invested, the return on investment accrues to all shareholders AND stakeholders in the broadcasting community.

BCE's benefits package deviates from accepted benefits norms.

35. Since the introduction of benefits policy, it has been understood that the vast majority of the benefits packages would flow to third party on-screen programming benefits, and a predominant amount of those benefits would flow to independent producers. The remaining benefits would usually flow to social or industry initiatives. The general distribution of a benefits package was 85% to on-screen benefits, where 75% of those benefits went to independent producers, and the remaining 15% went to other initiatives. Indeed, when CTVgm acquired CHUM it allocated 85% towards on-screen programming and 15% towards social benefits, the Commission described the proposed allocation of benefits by CTVgm of to be "appropriate and consistent with past practice."³

³ CRTC BD 2007-165, paragraph 48

36. Over the last ten years, the largest acquisitions of broadcasting assets have followed this pattern, except the 2006 decision where BCE divested 80% of its shares of CTV to Woodward, the Teacher's Pension Plan Board, and the Torstar Corporation. BCE's proposed benefits package goes against this accepted practice: only 20% of the benefits packages goes to programming, while the rest flow to infrastructure upgrades and digital TV transition initiatives.
37. Although DOC understands the necessity for BCE to upgrade its infrastructure to serve the needs of the Canadian public, we do not think that benefits money should be used to fund the necessary costs of doing business. In the past, the Commission has dismissed benefits packages that do not flow primarily to third parties. In cases where the purchaser designs a benefits package in which the money is used to upgrade facilities, the Commission is right to ask whether these costs are part of the necessary cost of doing business in the broadcasting industry.
38. Apart from the Onscreen Programming, and Multi-Platform Content, and the Radio Benefits, DOC fails to see how the rest of BCE's incentives flow to third parties and benefit the larger production community. Instead, they target BCE's infrastructure and the stations it would acquire.
39. BCE does not clarify the amount of tangible benefits that flow to the independent production community in its On-Screen Programming incentive. Although the incentive lists PNI programming as a beneficiary, BCE does not indicate how much of the \$35 million would be directed to this programming. Moreover, BCE also includes genres that are rarely produced by the independent production community (sports and news) as programming that would be funded by the incentive. Currently, it is not clear how the on-screen programming benefits would actually flow to independent producers given these conditions. DOC would like BCE to delineate how much it actually intends to spend on independent production in this initiative.
40. Although BCE has indicated that it would be supporting programming of national interest in its on-screen initiative, DOC considers the commitment to be completely insufficient. BCE is acquiring the most popular and largest Canadian private television corporate group with an array of different specialty assets that are viewable across the entire country. CTVgm is in the best position to develop, broadcast, and promote the under-represented genres to the benefit of the Canadian public.
41. BCE has argued that the long term viability of CTV, its vertical integration, and 3 screen programming initiatives would be intangible benefits to the Canadian consumer. However, BCE has not equally committed to supporting the programming of national interest regime, and the cultural fabric of Canadian society. DOC anticipates that BCE will operate CTVgm effectively, but it needs to make firm commitments to the cultural mandate of the Broadcasting Act. As the prospective owner of the largest television

network in Canada, BCE should support under-represented programming more seriously and earnestly.

42. DOC's last criticism regarding the benefits package is that there is an absolute absence of social or industry benefits. Over the last 10 years, most benefits packages included benefits that would flow to non-profit organizations that represent various stakeholders in the Canadian broadcasting environment ranging from media literacy initiatives to film library preservation.
43. The lack of social benefits in this package speaks to a larger trend that DOC finds troublesome. Investors' resistance to investing in the larger fabric of the production community. To wit, Shaw's benefits package did not initially contain any social benefits. Shaw eventually put in \$3 million for described video after 5 national organizations representing disabled Canadians demanded action be taken. BCE's package contains only \$840,000 for professional development internships in new media. In 2000, BCE created a benefits package where 13 social and industry initiatives received over \$17 million in funding.
44. The impact on these organizations cannot be understated. They form the backbone of the broadcasting community. Associations and organizations represent the interests of each sector of the broadcasting community. They operate professional development and career development programs. They administer funds, coordinate mentorships, and educate communities about countless issues. The economic, social, and cultural benefit that flow from these organizations flow beyond the broadcasting sector. Social and industry benefits are at the very heart of benefits policy.

BCE needs to redesign its benefits package.

45. For the reasons outlined above, DOC argues that BCE should redesign its benefits package. The new benefits package should include the following elements:
 - All television assets should be valued at 10%;
 - 85% of the benefits should be directed to on-screen programming;
 - 75% of the on-screen benefits should be dedicated to independent production;
 - The current on-screen benefits need to be clarified so that the independent production community understands how much money will flow to it;
 - And the benefits package should include social and industry benefits.
46. Regarding the administration of the benefits, DOC agrees with BCE that the benefits should be self-administered. BCE's previous benefits package was self-administered and allowed for stable financing and production for independent producers working with CTV.

47. Given that the new benefits proposal would be redirected towards supporting programs of national interest programming, BCE may need to consult with different industry associations representing the different genres in order to create benefits that would maximize the return on investment for shareholders and stakeholders. BCE will be acquiring many of Canada's most well known documentary assets including: the Discovery stations, Bravo, Space, Access, Fashion Television, and many others. DOC welcomes any consultation with BCE regarding the construction of any benefits for the documentary community.

Conclusion

48. Over the last 10 years, the Commission's policy on tangible benefits has directed millions of dollars towards on-screen programming and millions towards different community, industry, and social organizations and initiatives. This support has allowed for Canadian programming to be successful within our own borders and abroad. The new 3 screen era of broadcasting we find ourselves in will require the same level of support as there are more players, new technologies, and new benefits accruing to Canadians.
49. The Commission's past policy on benefits has developed the sector's capacity and has always been complementary to its programming regime. By moving from the priority programming regime to the PNI content regime, the Commission reaffirmed its support to the Canadian independent production community and DOC hopes that any future benefits policy will be harmonized with the PNI regime. In this specific instance however, it is DOC's view that the Commission should ask BCE to reevaluate its benefits package and have BCE redesign the package to meet industry norms.
50. DOC would like to thank the Commission for this opportunity to comment on this application. This acquisition has far reaching consequences for the entire broadcasting community, especially the independent documentary production community. We trust the Commission will consider our positions when evaluating this transaction.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Christou', written over a horizontal line.

John Christou
Chair

-End of document-