

# **Red Herring:**

**Why Canwest has made local news its scapegoat.  
Why a new revenue stream is a better approach  
for Canada's entire broadcasting system**

*Licence Renewals for Private Conventional Television Stations,  
Broadcasting Notice of Consultation CRTC 2009-113  
(Ottawa, 3 March 2009)*

**Intervention of the  
Communications, Energy and Paperworkers Union of Canada  
Concerning Canwest's  
Applications to amend its television programming licences**

30 March 2009

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## Executive Summary

- ES1 As the CRTC told Canadians on February 2009 that the scope of this hearing is restricted to addressing four policy issues told the Heritage Committee on March 23, 2009 that it will renew all OTA licences for one year, and, CEP understands the purpose of this proceeding to be a hearing of licensees' proposed amendments to their applications, and of comments on the policy questions.
- ES2 CEP strongly regrets that the unfair secrecy and undue haste used by the CRTC in this proceeding, and its decision to deny Canadians any opportunity to comment on the hearing's scope, have displaced procedural requirements for fair process, and render subsequent decisions in this proceeding open to challenge.
- ES3 In addition to new unregulated revenues from retransmission, dynamic advertising and New Media broadcasting, private broadcasters can now also reduce their costs by undertaking more in-house production and combining print and broadcasting operations. Allowing broadcasters to reduce their local programming without considering the highly relevant impact of new revenues and cost savings would represent a serious error, particularly since it has been so well-documented over the past year that Canwest's crisis is a crisis of self-imposed debt.
- ES4 Canadians who are entitled under the law to local programming service likely do not know that the CRTC has not used either regulations or conditions of licence to require broadcasters to provide this service. Only 9 of 100 private local TV stations have conditions of licence requiring specific levels of local news and local programming.
- ES5 A key problem with the regulatory approach adopted for the past twenty years, is that it has ignored private broadcasters' duty to their shareholders. This duty prevents private broadcasters from undertaking any actions that do not maximize shareholders' profits. By law, private broadcasters' first concern must be that of self interest – to assume or believe otherwise is to ignore the legal requirements of corporate law.
- ES6 Relying on broadcasters' self-interest to protect local news and local programming despite private broadcasters' duty to maximize profits to their shareholders is why the CRTC's deregulatory approach towards local content has failed. The absence of conditions of licence about the production and broadcast of clearly- and consistently-identified weekly hours of original local news and local programming by condition of licence has allowed – perhaps even encouraged – broadcasters to eliminate local programming.
- ES7 Since the CRTC has unfairly granted broadcasters' confidentiality over their historical station-by-station financial information, Canadians and CEP cannot and do not know broadcasters' evidence and the case to meet to protect local news. If broadcasters are relying on the current economic downturn to justify their elimination of local news, the economy is forecast to begin its economic recovery within the next year. Ignoring such information while allowing broadcasters to cut original local programming would represent a serious error.
- ES8 Accepting broadcasters' arguments that they can not survive without cutting service to the local communities they were licensed to serve, despite twenty years of consolidating media ownership in which CTV and Canwest alone now obtain 90% of English-language television revenues, would be a serious error.

- ES9 CEP opposes the amendments proposed by CTV, Canwest and Rogers.
- ES10 CEP requests that the CRTC instead impose measureable, enforceable and enforced conditions of licence on each of these broadcasters' television programming undertakings to originate and transmit specified hours of original local news and original local programming, and to expend specified minimum levels on original local news and original local programming.
- ES11 If the CRTC grants private broadcasters' applications to reduce local programming for one year, Canadians and CEP require broadcasters' express undertaking that they will reintroduce current or improved levels of local programming in 2010. Without this undertaking – one that the CRTC must enforce through express language in conditions of licence for each of the affected licensed undertakings – Canadians will have yielded existing local programming commitments without receiving anything of commensurate value in exchange. This would not simply be inadequate regulation, but a bad contract.
- ES12 To summarize: no news, is very bad news – but CEP's proposal offers a clear road to improvement.

## **I The CRTC and the public interest**

- 1 The Communications, Energy and Paperworkers Union of Canada (CEP) is one of Canada's largest unions, representing more than 150,000 members who work in Canada's media, energy and paper sectors across Canada. Twenty-five thousand of our members work and have experience in Canada's audio-visual and newspaper sectors. In brief, CEP is this country's largest union of media employees.
- 2 The CRTC's January, February and March 2009 statements to the public and to the House of Commons Standing Committee on Canadian Heritage have established, in our view, that the April 2009 public proceeding will not deal with individual undertakings' applications to renew their licences, but the amendments to these licences that broadcasters are proposing. During questioning at the Heritage Committee meeting of March 23, 2009, in fact, the CRTC's Chairman explained that all licences would be renewed for one year. The CRTC's February notice of consultation explained that the CRTC will hold a hearing this summer to establish a new licensing framework, and that a third hearing in April 2010 will hear licensees' applications to renew their licences for 'full', seven-year terms.
- 3 In this submission, CEP addresses local programming, the local programming improvement fund (LPIF) and licensees' applications to amend the local programming requirements of their local television station licences.

### **A FAILURE OF DUE PROCESS**

- 4 Due process and legal procedures serve key roles in our society: in the CRTC context, process and procedures should provide fair opportunities for all parties to address the development of broadcasting policies, and the implementation of those policies through licensing decisions. CEP has strong concerns about the legality of the CRTC's approach to the April 27<sup>th</sup> hearing and of the decisions it subsequently issues.
- 5 The current CRTC approach to the TV renewals has been secretive, confusing, rushed, arbitrary and focussed on serving private interests. A rushed process that confounds policy making with licensing decisions, that interjects new issues and new questions throughout the intervention period and that denies key relevant information to some participants, cannot yield fair and reasonable decisions.
- 6 We believe the Commission's approach is contrary to the spirit of the *Broadcasting Act, 1991*, and ignores the CRTC's own *Rules of Procedure*.
- 7 A purportedly crisis-driven, unpredictable, proceeding based in large part on secret evidence, deters informed public participation, and steers attention away from the private sector's fundamental goal for this proceeding: to cut or eliminate local programming despite its profitability and despite Parliament's express desire that the broadcasting system provide local programming, including news.

1 **“CRISES” HAVE MADE A SHAM OF DUE PROCESS**

- 8 Our reasons for reaching this conclusion are based on the events that have led to the current (April 2009) hearing. Throughout, we note that the CRTC has not granted Canadians time to participate effectively, and has denied Canadians access to the sole relevant evidence about the issues in this proceed – namely, individual local TV stations’ historical financial data.
- 9 Canadians should be forgiven for feeling as if they are being rushed along a path of no return:
- In early 2007 the CRTC denied CEP’s access to information request for historical financial and staffing data of individual local TV stations. CEP had requested these data to begin its own preparations for private broadcasters’ local TV station licence renewals. After two years, it appears that the Commissioner of Information has been unable to reach a resolution with the CRTC of our complaint about the CRTC’s denial of information that is highly relevant to this proceeding, and was released routinely throughout the 1970s and 1980s.
  - In May 2007 the Commission issued its television policy “[i]n order for OTA television licensees to prepare for the upcoming renewals of their licences”.<sup>1</sup>
  - In mid-January 2008 the CRTC issued its ownership policy to ensure diversity of voices, and said that it would review broadcasters’ improvements to local news and information at their licence renewals:
 

**... any benefits related to increased consolidation [of ownership] 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.**<sup>2</sup>
  - In mid-February 2008, in response to CEP’s request that the CRTC investigate Canwest’s conversion of its local TV stations into news bureaux fed by an unlicensed network of four unlicensed broadcasting centres, the CRTC’s Vice-Chairperson of Broadcasting, Commissioner Arpin, told CEP that since the centres “will only start to be implemented in

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<sup>1</sup> 2007-53, at para 3.

<sup>2</sup> *Diversity of voices*, Broadcasting Public Notice CRTC 2008-4 (Regulatory policy) (Ottawa, 15 January 2008).

Spring 2008, the Commission will examine this issue more closely, if necessary, at the licence renewals in 2009.”<sup>3</sup>

- In August 2008, the Commission notified Canadians through a notice on its website that it would hear licence renewal applications from CTVglobemedia, Canwest, Rogers and Quebecor in spring 2009. The CRTC does not invite the public’s views on the issues the spring renewal should address.
- In early October 2008, the CRTC’s staff denied CEP’s September 9, 2008 request for the chance to review the CRTC’s local TV station licence renewal application forms, and told CEP that the CRTC’s TV policy and its then-unreleased BDU policy would be considered at the 2009 renewal hearing:
 

... the key issues that should be addressed in the licence renewal applications are identified in *Determinations regarding certain aspects of the regulatory framework for over-the-air television* (Public Notice 2007-53), and will also be cited in the BDU and discretionary services policy statement that is to be issued later this month. <sup>4</sup>
- The CRTC’s staff also told CEP that the CRTC would “release its determinations with respect to the proposal to publicly disclose aggregated financial data for the large OTA television groups, as set out in Public Notice 2008-6” .<sup>5</sup>
- On October 21, 2008 the CRTC “directed” large broadcasting groups to disclose their past year of historical financial data, aggregated by medium. <sup>6</sup> Broadcasters do not make this disclosure, and although the CRTC has the data itself, it does not make the disclosure either.
- The CRTC also directs the Canadian Association of Broadcasters (CAB) to file an implementation plan for a Local Programming Improvement Fund no later than January 19, 2009.<sup>7</sup>
- On November 17, 2008 Canwest files an application with the CRTC to suspend its newsroom-separation condition of licence.<sup>8</sup>

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<sup>3</sup> Michel Arpin, Vice-Chairman, Broadcasting, CRTC, *Re: Complaint by the Communications, Energy and Paperworkers Union of Canada (CEP) regarding CanWest MediaWorks Inc. (CanWest) – Broadcast Centres*, (Gatineau, 28 February 2008) at 4.

<sup>4</sup> Peter Foster, A/Director General, CRTC Television Policy and Applications, *Re: 2009 Over-the-air (OTA) television licence renewal applications forms*, (Gatineau, 8 October 2008).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Disclosure of aggregate financial data for large broadcasting distribution undertakings and over-the-air television and radio ownership groups*, Regulatory policy, Broadcasting Public Notice CRTC 2008-27 (Ottawa, 21 October 2008).

<sup>7</sup> Broadcasting Public Notice CRTC 2008-100 at paragraph 377: “Should the CAB fail to provide this plan by 19 January 2009, the Commission will initiate a process to solicit tenders from other interested parties”

- On January 12, 2009, private broadcasters including Canwest file their licence renewal applications.
- On January 13, the CRTC invites comments on Canwest's application to suspend its newsroom-separation condition of licence.<sup>9</sup> CEP opposes this application because Canwest has just filed its renewal application, and in the past the CRTC has not amended important conditions of licence just before it hears a licence renewal application.
- On January 19, the CAB does not file its ideas for the LPIF, but the CRTC does not issue a call for alternative proposals.
- On January 30, having received and presumably reviewed the secret licence renewal applications of Canada's largest broadcasters, the CRTC announces that wonders whether the scope of the April 2009 renewal hearing should be 'narrowed'. The CRTC ignores provisions in its *Rules of Procedure* that permit it to consult with parties about the scope of its hearings, and presumably consults with itself.
- On February 13<sup>th</sup> the CRTC announces that it has decided to 'narrow' the scope of the 2009 renewal hearing to four issues, and invites broadcasters to comment on these issues by February 23<sup>rd</sup>. The CRTC does not gazette the renewal applications it has in hand, so Canadians do not know what broadcasters have said that may have led the CRTC to shift gears. The CRTC informs broadcasters that they will have the chance to file in secret their views about the impact that a 1:1 Canadian-foreign spending requirement might have, one week before the hearing begins.
- The mid-February notice's procedure lets broadcasters file answers about the 1:1 ratio on February 23<sup>rd</sup>, to read the public's response on March 30<sup>th</sup>, to file answers to the public ten days later, and to then refine their approach further by filing secret plans the week before the hearing which the public will be unable to compare with broadcasters' original views on February 23<sup>rd</sup>. CEP submits that in any chronology of events related to this hearing, this is the point at which the CRTC's due process requirements are no longer met.
- On February 23<sup>rd</sup>, broadcasters file their answers to the CRTC's questions, and in some cases withdraw their original renewal applications. The CAB files its ideas for the LPIF. The CRTC does not publish the CAB's letter.
- On March 3, the CRTC announces that it will indeed narrow the scope of the April hearing to the four issues it set out in February, and finally

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<sup>8</sup> Broadcasting Decision CRTC 2009-163.

<sup>9</sup> Broadcasting Notice of Consultation CRTC 2009-8.

makes broadcasters' current renewal applications public. The CRTC's confusing notice says it will grant every broadcaster a one-year licence unless they establish need for a longer-term licence, and says broadcasters will retain their existing conditions of licence unless they ask for amended conditions of licence. It says it will hold another hearing this summer to transform its licensing system from one that examines individual stations – as set out in the *Act* – to a group approach. It says it will use this group approach in April 2010 when it will hold another round of licence renewals.

- The CRTC's March 3 Notice of Consultation gives the public 27 days (including weekends) to review 86 applications and seven sets of responses to the four major policy issues.
- On March 4, the CRTC releases a formal CRTC decision denying CEP's request that it undertake a public inquiry into Canwest's conversion of its local TV stations into news bureaux serviced by an unlicensed network of unlicensed broadcasting centres. The CRTC advises CEP that
 

... there is no reason to hold a separate public proceeding to deal with this matter. In Broadcasting Notice of Consultation 2009-70, the Commission identified the appropriate contributions to Canadian programming, including local programming, as one of the key issues to be discussed at the conventional television licence renewal hearing scheduled to begin on 27 April 2007 [*sic*]. The Commission considers that this proceeding will provide an appropriate public forum for the CEP to express its concerns regarding the impact of Canwest's Broadcast Centres on local programming.<sup>10</sup>
- On March 13, CEP writes the CRTC to protest the CRTC's unreasonable schedule. We propose that the Commission grant one-year administrative renewals immediately, and hold a policy hearing early in the summer to examine the LPIF so that it may amend (if necessary) its regulations to permit collection of the LPIF fee by September 2009. By April 2010, when the CRTC holds a hearing to renew private local TV stations they will be receiving LPIF funding, and perhaps as well new income from the elimination of all advertising limits and retransmission consent negotiations. The CRTC ignores CEP's letter.
- On March 17 – halfway through the intervention period – the CRTC makes the CAB's LPIF ideas public, and asks the public to consult on several new questions and ideas. CEP writes the CRTC to advise that it will not file comments by March 30, because of lack of time and inadequate notice. CEP expresses its concern that discouraging public participation may be the intention of this late change to the proceeding's agenda.

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Broadcasting Decision CRTC 2009-115.

- On March 23, the CRTC's Chairman and Vice-Chairman of Broadcasting appear before the House of Commons' Standing Committee on Canadian Heritage. In response to a direct question, the Chairman announces that the April 2009 proceeding will renew every local TV station licence for one year.
  - On March 27 – three days before interventions are due – the CRTC announces that in response to letters it has received from the CAB, Rogers and CTV, it is inviting comments on amending its BDU regulations more quickly than planned to implement the October 2008 retransmission consent regime. It also advises that it will consider fee for carriage in April 2010, "as part of the group-based licence renewal process." Since fee for carriage is now on the horizon, it is unclear what impact the LPIF will have.
- 10 This hearing serves private broadcasters' interests because the haste with which it is proceeding, and the CRTC's unfair decision to keep important and highly-relevant information secret, have removed Canadians' ability to provide the Commission with informed comment. CEP continues to believe that its unanswered proposal to the CRTC to defer the major policy questions set out in its mid-February notice until the summer permit clear, sober thought.
- 11 Nevertheless, we believe this hearing can be salvaged to produce meaningful progress that will serve Canadians' interests in local programming, broadcasters' interests in new revenues and the CRTC's interests in meeting its legislated mandate. Before turning to our proposal, however, CEP wishes to set out for the record, a brief synopsis of our views about local programming and its importance.
- 2 CRTC OPERATING IN THE SHADOWS**
- 12 The old maxim is that 'justice loves the light'. This principle has led to fundamental rules about disclosing evidence relevant to key issues in both legal and quasi-legal proceedings. CEP has been asking the CRTC for more than two years to disclose historical financial and staffing data for individual TV stations, so that we and Canadians can gain a clear understanding of the truth about Canadian broadcasting. The CRTC refuses to disclose such data. As the recitation of the last six hasty months has shown, the CRTC has also refused to disclose broadcasters' aggregated financial data.
- 13 The \$74,997 "Study of Canadian OTA Local News Economic and Audience Trends (Final)" that the CRTC commissioned from NGL and has posted on the CRTC's website is not relevant to Canadians' desire to understand the CRTC's approach to local news, because the CRTC has clarified that it "does not intend

to rely on this study to formulate its decisions with respect to the 2009 television renewal proceedings.”<sup>11</sup>

- 14 But even the CRTC’s own published financial data – for Canada and five regions – are inadequate to clearly explain what is happening in broadcasting. For instance, we note that the CRTC’s 2008 financial data for TV “includes the results of 2 new stations: CKCS-TV - Calgary and CKES-TV – Edmonton”. When stations first launch, they are more likely to lose money than to make it. Including their impact is misleading because it may make private TV’s financial position look far more dire than it is. This is why, when the Board of Broadcast Governors – the CRTC’s predecessor – reported on the financial status of the industries it regulated, it took care to remove the impact of new stations for their first three years of operation.
- 15 Without station by station data, Canadians have no way to assess broadcasters’ arguments, or to hold the CRTC accountable. If justice loves the light, the CRTC appears to live in the shadows.

### **B THE LAW REQUIRES LOCAL PROGRAMMING**

- 16 Section 3(1)(f) of the *Broadcasting Act, 1991* states that each broadcasting 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. In our view, Parliament did not intend that its legislation would, despite this provision, enable general-interest, OTA local TV stations to reduce or eliminate entirely local news and local programming. Yet, this is what is happening.
- 17 Section 3(1)(i)(i) states that Canada’s broadcasting system should “be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes”. In our view, Parliament did not intend that its legislation would, despite this provision, enable general-interest, OTA local TV stations to reduce or eliminate entirely all forms of local programming but news. Yet, this has already happened over the past ten years, because of the CRTC’s decision to no longer requirement specific quantitative commitments to non-news local programming.
- 18 Section 3(1)(i)(ii) states that the programming provided by Canada’s broadcasting system should be “be drawn from local, regional, national and international sources”. In our view, Parliament did not intend that its legislation would, despite this provision, enable general-interest, OTA local TV stations to reduce or eliminate local news-gathering infrastructure, and non-news production capacity. Yet, this has already happened over the past ten years, because of the

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<sup>11</sup> CRTC, A/Director General, Television Policy and Applications, *Letter Re: Nordicity Group Ltd. (NGL) Local News Study* (Gatineau, 20 March 2009), at 1: “The Commission does not intend to rely on this study to formulate its decisions with respect to the 2009 television renewal proceedings.”

CRTC's decision to no longer requirement specific quantitative commitments to specific hours of weekly original local news, and specific levels of non-news local programming.

- 19 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." In our view, Parliament did not intend that its legislation would, despite this provision, enable general-interest, OTA local TV stations to reduce or eliminate entirely local news and local programming that provides Canadians in their communities with opportunities to be exposed to differing points of view on matters of public concern in their communities. Yet, this is has happened over the last ten years, thanks to the CRTC's policies, because stations have interpreted any "commitment" they made about local programming, to .
- 20 It is quite true that Parliament used the term, "should" instead of the imperative, "shall" in these sections. If the CRTC does not consider itself bound to implement these objections, we do not understand why it was prepared to impose conditions of licence with respect to the provision of varied Canadian priority programming.<sup>12</sup> The absurd effect is that broadcasters are eliminating local news programs but must offer Canadians dramas about small communities and their residents (*Corner Gas*). If the CRTC does not consider itself bound to implement these objections, we do not understand why it was prepared to impose conditions of licence with respect to closed captioning.<sup>13</sup> The absurd effect is that broadcasters are eliminating local news and local programming that they must closed caption by condition of licence.<sup>14</sup>

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<sup>12</sup> See e.g. *Licence renewals for the television stations controlled by Global*, Decision CRTC 2001-458 (Ottawa, 2 August 2001):

24. The Commission has decided, therefore, to reimpose on the licence of each station, a condition of licence that requires the licensee to broadcast in each week, as a minimum in each broadcast year, an average of 8 hours of Canadian programs in the priority program categories between the hours 7 p.m. and 11 p.m. The Commission will continue to monitor Global's performance with respect to the provision of priority programming, and expects that each station's schedule will ensure a reasonable distribution of priority programming both throughout the broadcast week and the broadcast year.

<sup>13</sup> Section 3(1)(p) also uses "should": "(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose".

<sup>14</sup> *Licence renewal for seven CHUM Limited television stations*, Decision CRTC 2002-323 (Ottawa, 21 October 2002):

85. Accordingly, by condition of licence, in respect of each of CHUM's television stations other than those serving Wingham and Wheatley, the licensee is required to caption 90% of all programming aired during the broadcast day, including all category 1 programming (news), beginning 1 December 2002.

86. In the case of each of CKNX-TV Wingham and CHWI-TV Wheatley, it is a condition of licence that the licensee caption 90% of all

- 21 In our view, decisions that permit the elimination or drastic (one-third or more) elimination of original local news or local programs based on the argument that the “should” provision of the *Act* permits this to happen, will be subject to court challenge.

**C CANADIANS WANT LOCAL PROGRAMMING**

- 22 The CRTC has acknowledged Canadians’ desire for local programming for thirty years. In 1979, for instance, the CRTC said it “... recognizes that the first and foremost responsibility of every licensee is to provide adequate programming to its local or primary service area ...”<sup>15</sup>
- 23 The December 2007 Nanos Research survey commissioned by CTV and Canwest found that 77% of cable/satellite TV subscribers “a large majority” – “value local news programs more than any other Canadian programming services”.<sup>16</sup> These results applied across both genders and all levels of age, education and income.
- 24 The interesting point is that Canadians clearly want local news – as the protests across Canada, such as those in Hamilton, have demonstrated. CHCH-TV Hamilton represents the gateway to Canada’s largest markets, and has received overwhelming support from residents in Hamilton. They want local news, even though pseudo-networks of the past decade have done their best to eliminate the characteristics of ‘local news’, by offering generic, one-size fits all newscasts: at stations controlled by CTVgm, for on-air reporters are required to sign off “Jane Smith, A news”, rather than “Jane Smith, Ottawa”.
- 25 Despite Canadians’ desire for local news, broadcasters and the CRTC both know that local news and local programming are not protected by conditions of licence. As a result, when broadcasters want to reduce costs, nothing legally prevents them from eliminating local news, even if these programs turn profits. After all, the expenditures broadcasters make on local news, can simply be transferred to foreign program purchasing. Even if a 1:1 spending ratio were adopted, non-news Canadian programs could still replace local news and generate additional

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programming aired during the broadcast day, beginning 1 September 2004. The Commission notes the licensee's statements that it has, in fact, achieved captioning levels in the range of 95% to 97% for local news programming on these stations. The Commission expects CHUM, at a minimum, to continue to achieve these levels of captioned news programming on both stations. The Commission further advises CHUM that, at the time of the next licence renewals, it intends to examine the appropriateness of increasing the captioning requirements to include all news programming. Accordingly, the Commission expects CHUM, by that time, to be captioning 100% of all news programming on these two stations.

<sup>15</sup> *Statement Regarding Review of Promises of Performance of TV-Hamilton Area Television Stations*, CRTC Public Announcement (Ottawa, 9 August 1979).

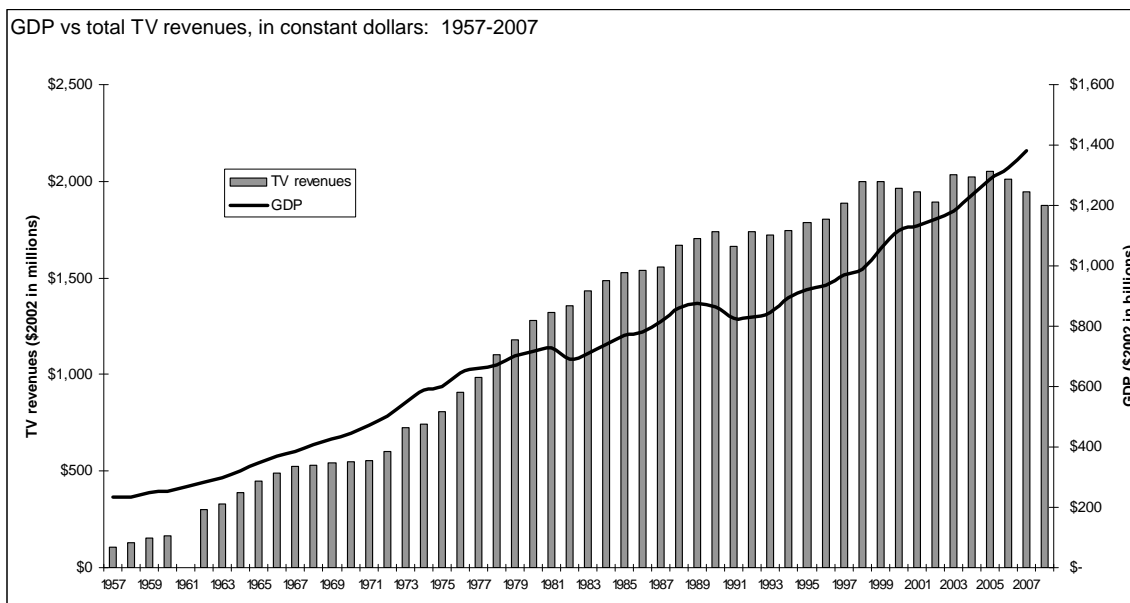
<sup>16</sup> Nanos Research, “Local news drives TV Value” Press Release (24 January 2008);

income streams that local news cannot readily generate. It is simply easier to sell or license a Canadian drama now, next year, or the year after, because local has a finite shelf-life.

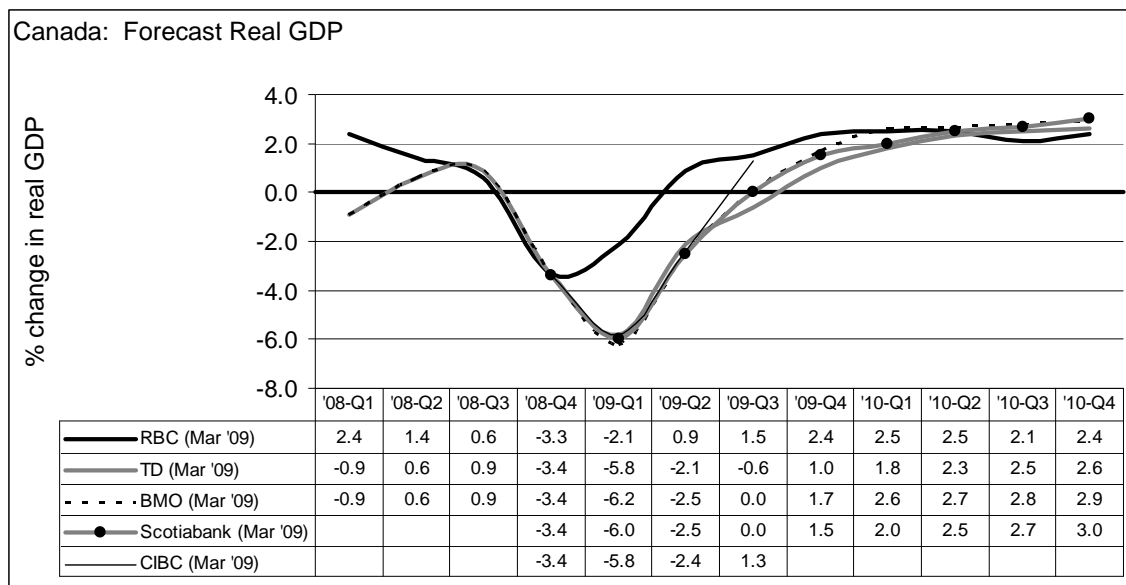
## II Cost cutting and new money

### A CURRENT REVENUES AND EXPENDITURES

26 Generally speaking, private TV broadcasters' revenues fluctuate with the economy. In the early 1990s, for example, TV revenues decreased when real GDP decreased. Revenues recovered after several years, as the economy recovered.



27 Current forecasts predict the economy will begin to recover beginning next year, suggesting that private TV revenues are also likely to recover:



28 In the interim, however, we are left with the problem that private TV broadcasters claim they cannot operate unless they close stations or reduce local programming. We have no data on which to judge this claim, and believe that the CRTC should accord such claims no weight – because the evidence cannot be challenged by anyone but broadcasters or the CRTC, neither of which is, in our respectful submission, entirely impartial.<sup>17</sup>

29 The CRTC has relied heavily on its knowledge of individual stations' financial capacity to assess broadcasters' arguments and claims for at least twenty-five years:

In determining each licensee's capability to contribute more to Canadian programming, the Commission will take into account all relevant factors, including an analysis of the licensee's present and projected financial capacity and the particular needs of, and resources available, in the community.<sup>18</sup>

30 More recent examples where the CRTC used its private knowledge of broadcasters' true financial status to assess their applications include the following:

CKSH-TV (1992)

In its renewal application, the licensee made a commitment to produce only 2 hours 35 minutes per week of local news programming during the new licence term, whereas it had committed to produce 4 hours 25

<sup>17</sup> Broadcasters must advance their own interests as a matter of fiduciary duty, we suggest; the CRTC – having permitted such consolidation of ownership that private broadcasters' debt has become unmanageable for some -- may be reluctant to admit its role in creating the current situation.

<sup>18</sup> *Renewal of Television Broadcasting Licences*, Decision TV 84-9 (Ottawa, 11 January 1984).

minutes per week of such programming during the current term. Some stations whose licence renewal applications were considered at the same hearing also proposed to reduce their levels of local news programming. **Given their difficult financial situation, the Commission renewed their licences for a five-year term with the expectation that the licensees increase their levels of local news programming as soon as their financial situation improves. In this case, the Commission notes that CKSH-TV is in a favourable financial situation compared with the other stations.** In keeping with its policy for local television programming (Public Notice CRTC 1991-22) and the preamble to this decision, the Commission denies the proposed reduction in local news and expects the licensee to broadcast a minimum of 4 hours and 25 minutes of local news programming weekly during the new licence term.<sup>19</sup>

#### CIMT-TV (1992)

Following a Public Hearing in Montréal and Quebec City beginning on 23 March 1992, the Commission renews the broadcasting licence for the television programming undertaking consisting of TVA television network affiliate CIMT-TV Rivière-du-Loup and its transmitters CIMT-TV-1 Edmundston, CIMT-TV-2 Trois-Pistoles, CIMT-TV-4 Baie-Saint-Paul and CIMT-TV-5 Saint-Urbain, from 1 September 1992 to 31 August 1997, subject to the conditions specified in the licence to be issued.

...

The Commission expects the licensee to broadcast 2 hours and 22 minutes of local news programming weekly as proposed in its renewal application. The Commission also expects the licensee to increase its local news programming as soon as **its financial situation improves.**<sup>20</sup>

#### CHAU-TV (1993)

In its renewal application, the licensee made a commitment to produce only 1 hour and 40 minutes per week of local news programming during the new licence term, whereas it had committed to produce 5 hours and 45 minutes per week of such programming during the current term. **The Commission notes that CHAU-TV is in a favourable financial situation compared with the other stations in the province of Quebec.** In keeping with its policy for local television programming (Public Notice CRTC 1991-22), **the Commission denies the proposed reduction in local news and expects the licensee to broadcast a minimum of 3 hours of local news programming weekly during the new licence term. Accordingly, the licensee is required to submit to the Commission, within 90 days of this decision, a revised Promise of Performance containing a commitment to broadcast at least 3 hours of local news per week.**<sup>21</sup>

#### CKSH-TV (1998)

2. The Commission expects the licensee to honour its commitment to broadcast, on an annual basis, a minimum weekly average of 4 hours and 25 minutes of local newscasts. Further, **the Commission expects the licensee to increase the amount of local news programming broadcast, since its financial situation would permit it to do so.**<sup>22</sup>

19

Decision CRTC 92-550 (CKSH-TV).

20

*Radio Nord Inc.*, Decision CRTC 92-552 (Ottawa, 13 August 1992) (CHOT-TV).

21

Decision CRTC 93-452 (CHAU-TV).

22

Decision CRTC 98-101 (CKSH-TV).

## CHOT-TV (1998)

The Commission expects the licensee to broadcast 3 hours and 10 minutes of local news programming weekly, as proposed in its renewal application. **The Commission also expects the licensee to increase its local news programming as soon as its financial situation improves.**

2. The Commission expects the licensee to honour its commitment to broadcast, on a yearly basis, a minimum weekly average of 3 hours and 10 minutes of local news programming and to ensure that these newscasts are different from those of CFGS-TV (TQS) Hull. In Decision CRTC 92-552 dated 13 August 1992, the Commission set out the expectation that the licensee would increase the amount of local news programming broadcast, as soon as its financial situation had improved. **The licensee did not meet this expectation despite an increase in its level of profitability. The Commission therefore expects the licensee to increase the amount of local news programming broadcast and will re-examine this at the time of CHOT-TV's next licence renewal.**<sup>23</sup>

## CFEM-TV (1998)

4. In Decision CRTC 92-556, the Commission also set out the expectation that the licensee would increase the amount of local news programming broadcast, as soon as its financial situation had improved. The licensee did not meet this expectation despite an increase in its level of profitability. The Commission therefore expects the licensee to increase the amount of local news programming broadcast and will re-examine this at the time of CFEM-TV's next licence renewal.<sup>24</sup>

- 31 More recently, in 2000, the Commission discussed local programming offered by CHCH-TV and CHEK-TV:

In weighing concerns about the diversity of voices in the particular communities that CHCH-TV and CHEK-TV are licensed to serve, the Commission is further mindful of the fact that there is relatively little by way of programming on either station that is currently oriented to those communities. This is despite the needs and wishes for strong, locally focused television services that have been clearly expressed in supporting interventions filed by residents of Hamilton and Victoria. **The Commission must also acknowledge the costs of providing such local service in the communities concerned and, in this context, has taken into account CanWest Global's ability to deliver on its commitments to increase substantially the amount of local programming aired on these two stations.**

....<sup>25</sup>

- 32 But – and well aware that we are addressing this point over and over again – the CRTC has not explained its decision to hide local TV stations' financial position from Canadians. More than a quarter of a century ago the CRTC clearly explained the importance of money to Canadian programming:

3. Canadian Television Programming Performance

...

<sup>23</sup>

*Licence renewal for CHOT-TV*, Decision CRTC 98-109 (Ottawa, 7 April 1998).

<sup>24</sup>

*Radio Nord inc.* Decision CRTC 98-111 Ottawa, 7 April 1998 (CFEM-TV).

<sup>25</sup>

Decision CRTC 2000-221 at ¶13.

An examination of the stations' logs during the last three years indicates an unacceptable decline in the amount of Canadian programming scheduled by a number of private television broadcasters serving major markets during the hours of heaving viewing, between 7:30 p.m. and 10:30 p.m.

...

**Adequate funding is essential if the necessary improvements are to be made. The regulation of Canadian content should therefore be designed to stimulate, to the greatest extent possible, increased expenditures by broadcasters on Canadian programming.**

<sup>26</sup>

...

- 33 The CRTC stopped disclosing individual station financials – the quasi-constitutional status of access to information in Canada notwithstanding – without any public process in the early 1990s. The CRTC continued to rely on these data to reach its decisions:

... in Public Notice TV 1991-22, the Commission announced its "Policy for Local Television Programming". This policy, while reaffirming the importance of the principle of local reflection, removed the requirement that television licensees make quantitative commitments to locally-produced programming in categories other than news. This provided local stations with the flexibility to play a variety of roles in contributing to quality Canadian programming either through in-house productions, or through co-operative ventures such as co-productions and other imaginative partnership arrangements.

Secondly, through the emergence of fewer and larger ownership groups in the television industry, most English-language stations now benefit from being part of more effective buying units that serve to facilitate the production and acquisition of quality Canadian programming for broadcast on local stations.

Further, the establishment of new Commission-sanctioned and industry-sponsored programming funds to assist program producers in financing the production of Canadian programming, and the success of Canadian broadcasters and program producers in marketing Canadian programming internationally, have created new resources to offset the cost of producing or acquiring Canadian programming.

Ensuring that broadcasters continue to have access to a sufficient and reasonable degree of flexibility has been a significant consideration of the Commission in developing a policy approach to guide the operations of private, English-language television licensees over the course of the next seven years.

**The Commission has reviewed each television station's performance during the current licence term and examined each licensee's proposals for the upcoming licence term. With respect to the current licence term, the Commission paid particular attention**

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<sup>26</sup> *Policy Statement on Canadian Content in Television*, TV Public Notice 1983-18 (Ottawa, 31 January 1983).

**to the performance of each licensee in such areas as news and local reflection, expenditures on Canadian programming ....<sup>27</sup>**

- 34 Because the CRTC does not now disclose data about individual local TV stations, CEP cannot present financial data that establish which stations make money, and which do not.
- 35 In fact, no critical scrutiny whatsoever can be made about broadcasters' allegations about their local financial situations, because no evidence has been made public to establish, for example, how broadcasters are defining "local advertising". Nor do we have any evidence about the cost structures that broadcasters impose on local advertisers: as many of the sixty communities now served by local television stations are 'single-station communities', how do we know whether broadcasters' cost structures or advertising policies constrain or limit local advertisers? On the expense side, what assurances do Canadians have that commonly owned specialty programming services are not using local television stations' services – without paying for any attendant expenses? Or that if local television stations use programming from commonly-owned specialty services<sup>28</sup> if local television stations are forced, due to common ownership, to provide services to specialty programming services but are not compensated for those services, there would be little wonder about the reduced profitability of local programming undertakings. There is little public discussion about these issues, because over the past twenty years, the CRTC has made no evidence available that addresses them.
- 36 CEP has opposed and continues to oppose the CRTC's current secrecy about individual TV stations' financial performance, as the CRTC has failed to provide evidence that disclosing such data will harm broadcasters. Without access to such data, Canadians have every reason to mistrust decisions that will harm them without any apparent accountability or transparency:

Led by TSN and its French language counterpart, RDS, sports channels earned huge dollars in Canadian television last year.

CTV-owned TSN and RDS posted profits (all figures before interest and tax) of \$58.82-million and \$22.76-million, respectively, in the 2007 fiscal year.

Rogers Sportsnet, the regional service owned by Rogers Communications, showed a profit of \$18.11-million.

TSN's figure, tops among all specialty services, is up more than \$10-million from 2006, when it earned \$48.58-million.

RDS showed a jump of about \$4-million from \$18.37-million in 2006.

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<sup>27</sup> *Introduction to Decisions Renewing the Licences of Privately-Owned English-Language Television Stations*, Public Notice TV 1995-48 (Ottawa, 24 March 1995).

<sup>28</sup> As is the case at CHCH-TV Hamilton, where the station airs Slice's *The Mom Show*, Life Network's *Birth Stories*, Foot Network's *Cook with me*, HGTV's *Dress my Nest*, *Design Rivals*, and *Home to Go*.

Sportsnet's profit dropped by almost \$7-million from \$25.35-million in 2006, a result largely of the network paying a huge fee starting in 2007 for regional TV rights to Toronto Maple Leafs games.

For comparative purposes, Discovery, a popular cable channel, reported a profit of \$33.54-million.

CBC Newsworld, one of the first cable channels launched in Canada, showed a profit of \$11.12-million.

All numbers are based on filings to the Canadian Radio-television and Telecommunications Commission.

A well-placed source said the profit information submitted to the federal regulator by the networks is generally skewed low.

**"They all fudge the numbers," he said. "They would rather not show what they're really making."**<sup>29</sup>

[bold font added]

- 37 The limited financial data disclosed to date in this proceeding are inadequate for Canadians to determine broadcasters' capacity to operate in our broadcasting system, let alone whether they have the ability to support Canadian programming as required by law. Without any kind of supporting documentation – *i.e.*, audited CRTC annual returns – CEP does not accept as evidence statements such as these: "When we bought the A's, they had never made money."<sup>30</sup>
- 38 We note, for example, that Canwest has told its shareholders that its increased operating expenses in its Canadian television operations were "primarily as a result of increased program amortization expense", and that reduced advertising resulted from the 2007/08 writers' strike, the loss of NFL broadcast rights, and "a softening advertising market for conventional television airtime".<sup>31</sup>
- 39 Local news does not appear in Canwest's explanation to shareholders of its financial problems – and without station-by-station financial data, Canadians simply cannot know what has led to broadcasters' financial problems (if these truly exist) and as a result, what needs to be done to address such problems (if the CRTC's existing deregulatory steps in the last year alone have not done the trick).

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<sup>29</sup> William Houston, "TSN, RDS profits continue to soar" *Globe and Mail* (16 May 2008).

<sup>30</sup> Ivan Fecan, "Note to Staff"

<<http://www.ctv.ca/generic/generated/static/CorpAbout/about.html>> (27 February 2009).

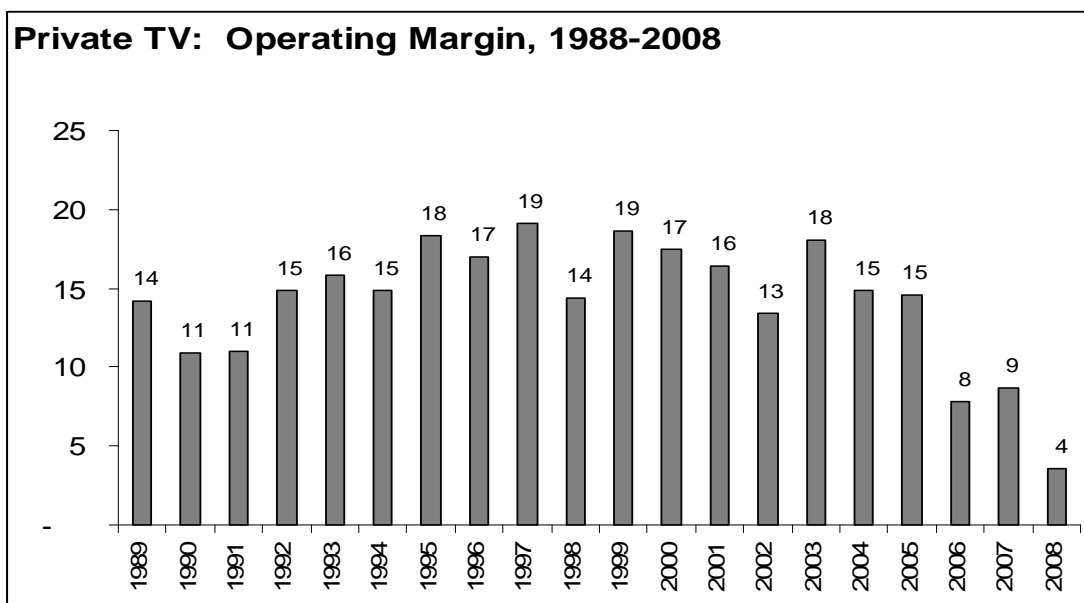
<sup>31</sup> Canwest Global Communications Corp., *Management's Discussion and Analysis for the year ended August 31, 2008*, (November 13, 2008) "Segmented Results" at 12:

*Revenue.* For the year ended August 31, 2008, revenues of \$671 million from our Canadian television operating segment were \$12 million, or 2% lower than fiscal 2007. This reflected lower airtime revenue in large part [*sic*] the result of the lack of new programming caused by the writers' strike, loss of the rights to broadcast the NFL, the effects of the Beijing Olympics, and a softening advertising market for conventional television airtime.

...

*Operating expenses.* For the year ended August 31, 2008, operating expenses (including selling, general and administrative expenses) of our Canadian television operations of \$626 million were \$5 million, or 1%, higher than the prior year, primarily as a result of increased program amortization expense.

- 40 Nevertheless, in the absence of individual station by station data, CEP acknowledges that private broadcasters' profit margins decreased between 2007 and 2008:



- 41 This decline happened – but we do not know why, and we do not believe that local news and local programming created it. In our view, the main financial problem that has led to a decline in operating profits revolves around excessive debt created by excessive consolidated media ownership.

**B BENEFITS OF OWNERSHIP CONSOLIDATION HAVE MYSTERIOUSLY EVAPORATED**

- 42 Since the mid-1980s the CRTC has relied heavily on consolidated media ownership to achieve the objectives of Canada's broadcasting legislation. Concentrated media ownership was supposed to create economic units so large that they could withstand global competition and create more and better Canadian programming.

- 43 This is what broadcasters such as Canwest said. They viewed local programming positively,<sup>32</sup> saw it as necessary to their 'brand',<sup>33</sup> considered it

<sup>32</sup> CRTC, *Transcript*, (Vancouver: 25 April 2000):

152 MR. ASPER: Well, number one, I think broadcasters will always be the bastion of local programming, of local reflection in people's markets. We will be the only ones who are willing to invest primarily because we are already there and it does not make sense for most players to try to start and take that niche away from broadcasters.

...

154 I think it's ironic that national players like CBC are pulling out of local. We see that as a very strong niche that we can exploit and we can be a bigger player in, and we can generate more viewership to our local programming. That's why the kind of plans that are before you today are before you today. We see a very valuable service being provided to the local communities as specialty channels proliferate which are only national.

necessary to their longer-term success online,<sup>34</sup> acknowledged Canadians' desire for it,<sup>35</sup> and re-stated their commitments to support lower-income stations,<sup>36</sup> and to restore local focus.<sup>37</sup>

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- 33 CRTC, *Transcript*, (Vancouver: 25 April 2000)  
 158 CHAIRPERSON OF THE COMMISSION: In your brand, what do you see as driving your brand, then, in that universe?  
 159 MR. ASPER: The local content. The fact that people can turn on and find out what is going on in their town. We have found always that people come back to: What's going on around me? What's going on within a kilometre of me? I mean, we have something on our Web site now that is a weather service that Gary Maavara dug up that provides weather within half a kilometre of your home. And that's something that has been tried in the U.S. and has been very, very popular. The closer it is to home, the more people want to find out about it.
- 34 CRTC, *Transcript*, (Vancouver: 25 April 2000),  
 ...168 MR. SHEA: If I may, Madam Chair. I think the question was posed of broadcasters being relevant, and I think what Mr. Asper has been trying to articulate is our strategy specific to how to remain relevant as a brand in the years ahead. We see it as twofold.  
 169 One, to be the strongest in local information so that if we are ever retransmitted on the Net as a full-up station, that people would go there as well as cable, but to have a national overlay of content that is very, very high in entertainment that is, in effect, the national brand of the company, programming that people can't get anywhere else but Global Television Network and Prime Time. That's a challenge I think all of us broadcasters face in this country and the years ahead because, as has been articulated time and time again, we are renters of content. We rent shows for two or three years.
- 35 CRTC, *Transcript*, (Vancouver: 25 April 2000),  
 [Leonard Asper] 160 People care more about local news than they do about national news and certainly more than international news. Our research, our experience has been that. That's the niche that other people are abandoning and we find, especially based on our studies of how it's worked in the United States, that's a niche that will remain there forever. It's human nature.  
 ...  
 326 MR. SHEA: Madam Chairperson, over the last number of months, since we have had the opportunity to actually visit some of the WIC properties -- Ken MacDonald behind me is a former Hamiltonian and grew up working at CHCH, but a number of us had a chance to spend time in the market, as well as others in Victoria -- let me be very clear that the message we got from the folks in Hamilton who both work at the station and some of the key community leaders was, "Please give us our station back", that over the course of the last number of years it had moved its focus to Toronto. Our plan with Hamilton is to move the focus west.
- 36 CRTC, *Transcript*, (Vancouver: 25 April 2000),  
 236 MR. ASPER: ...  
 239 ...while conventional revenues are still very strong today they are declining, period. Look at our financial statements. Look at CTV's financial statements. What CTV's got the benefit of is they have got ramping up of specialty channel revenues, so on an overall basis, to my knowledge, they don't break it down, but I can tell you in our shop Global Television's revenues are declining this year in a very weak conventional market which has been weakening over the last several years.  
 240 Manitoba, Winnipeg, Regina, Saskatoon, Halifax, they make less money collectively than Prime Television. A two-year old specialty channel. They're being subsidized by Global. We have always taken the view that because we do want to be a national entity and we want to ascend to the national stage, as I said, we are willing to take those risks in those smaller markets, but those smaller markets don't make sense to own a conventional station in unless they have a partner, unless they have somebody helping support them who's got enough resources to bring the local investment, investment in local programming.
- 37 CRTC, *Transcript*, (Vancouver: 25 April 2000), CanWest's Vice-President News:  
 105 One of the fundamental components of our proposal is to restore local service to CHCH-TV in Hamilton and CHEK-TV in Victoria. In the face of increased competition, and in the case of CHCH-TV continuous ownership uncertainty and instability, these stations have all but lost their local focus.  
 106 Now, throughout this process we have had numerous discussions with residents and key decisionmakers in these communities. The one resounding plea we have heard loud and clear in both markets is that residents want local service restored. In short, they want to see themselves reflected on their home town television station.  
 107 Through significant investments and new local programming initiatives, CanWest has pledged to give these stations back to these communities and provide service and leadership to viewers in both Hamilton and Victoria. Our resolve is clear. We have made commitments of more than \$18 million in

- 44 And the CRTC also relied on the 'bigger is better' argument when it justified its approval of CanWest's purchase of the WIC stations:

[t]he Commission is satisfied that the tangible and intangible benefits attached to this major consolidation of ownership within the broadcasting industry are significant, unequivocal and commensurate with the transaction's size. **It is convinced that the greater efficiencies and synergies that approval of this transaction brings to the Winnipeg-based CanWest Global organization gives it a strength that the Commission can call upon to provide support for the Canadian broadcasting system. Specifically, they will generate a substantially increased investment by this broadcaster in the development of Canadian talent and in the production of quality Canadian programming, particularly in western Canada.** These synergies and efficiencies will also enable CanWest Global to implement its commitments to restore and maintain a strong local focus in the programming offered by CHEK-TV Victoria and CHCH-TV Hamilton.

On balance, the Commission is satisfied that these outcomes, coupled with the application of certain conditions, safeguards and expectations intended to minimize the potential for undue competitive advantage and increase diversity, outweigh the Commission's policy concerns associated with the common ownership of like undertakings in the same market.

...<sup>38</sup>

- 45 Apparently, anyone who objected to CanWest's application was simply short-sighted:

24. The interveners' concerns about undue competitive advantage in the over-the-air television industry have been considered by the Commission against the background of its common ownership policy as well as its policy framework for Canadian television. In the Commission's view, in this broad context, **the interveners' concerns appear to be limited in perspective.** In the face of a rapidly changing and highly competitive broadcasting environment, both within Canada and abroad, several conventional television broadcasters have perceived expansion of their businesses as key to their future growth and survival. They have thus sought to acquire such vehicles as pay and specialty programming services as additional platforms and windows for their programming. In any assessment of the economic strength (and hence the responsibilities and obligations to the Canadian broadcasting system) of one broadcasting group relative to another, all of the various broadcast platforms, program windows and voices available to each must be taken into account.

...

27. Further, **it is CanWest Global and other large Canadian broadcasters who, capitalizing on the synergies and efficiencies made possible by their size, are best able to invest in attractive Canadian programming.** It is also these groups who have the greatest capacity to market that programming

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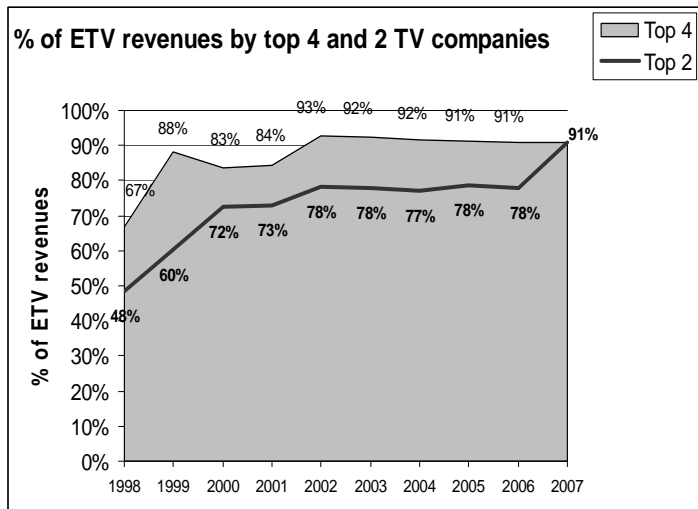
the creation of new local programming for Hamilton, Victoria and Kelowna, in addition to more than \$2 million in grants and endowments to key local arts groups in B.C., Alberta and Hamilton.

<sup>38</sup> *Acquisition by CanWest Global Communications Corp., through its wholly-owned subsidiary CW Shareholdings Inc., of the ownership interests held previously by WIC Western International Communications Ltd. in various conventional television stations and in certain other broadcasting undertakings, Decision CRTC 2000-221 (Ottawa, 6 July 2000).*

successfully at home and abroad – to the benefit of the Canadian broadcasting system and the audiences it serves.<sup>39</sup>

46 Instead of strengthening our broadcasting system, deregulation and highly concentrated broadcasting ownership have weakened it.

47 Over the past year CTVgm and Canwest have both argued publicly that they cannot afford to keep smaller local broadcasting undertakings open. CTVgm, for instance, said it decided not to renew some of its licences because they “are in areas of the



country where over the air broadcasting is just no longer economical.”<sup>40</sup> It has said that “[e]ach unit of our Company has to contribute in some way.”<sup>41</sup> What then, has happened to these companies’ claims that if the CRTC allowed them to buy up their competitors, they would protect weaker stations and ensure their survival?

48 After all, these are not small companies. Ten years ago, the top 2 TV English-language TV broadcasters obtained half that share (48%) of this subsector’s revenues. Last year CTVglobemedia and Canwest alone obtained 90% of the revenues in English-language television.

49 We might have assumed that earning 9 out of every 10 dollars in English-language TV would have enabled these two companies alone to make a reasonable living. Weren’t larger broadcasters created precisely to support the Canadian broadcasting system? Kenwal Communications explained this in March 1990, in its application to renew CHCH-TV’s licence, when it proposed to partner with the Blackburn Group:

The “raiding” practice has become a characteristic of Canadian television. In the TV, the network underwriter which introduces a new program normally retains that program through regular renewals. They don’t face annual “bidding wars” for these shows.

In TV, however, each renewal has become an “open market” situation, resulting in rapidly escalating costs. Networks “move in” on shows that have been successful on their competitors’ service. Examples affecting CHCH-TV include Hill Street Blues and Miami Vice. In a sense, Canadian program buyers have, through the “raid” process, created their own problem. Only a change in this pattern will slow the rate of escalation of program costs.

<sup>39</sup>

*Ibid.*

<sup>40</sup>

Ivan Fecan, “Note to Staff” <<http://www.ctv.ca/generic/generated/static/CorpAbout/about.html>> (27 February 2009).

<sup>41</sup>

*Ibid.*

A greater audience base and larger assured costs sharing is required; key components would result from this proposed partnership with the Blackburn Group.<sup>42</sup>

- 50 The CRTC agreed that more consolidated media ownership should benefit Canadian communities, through improved news:

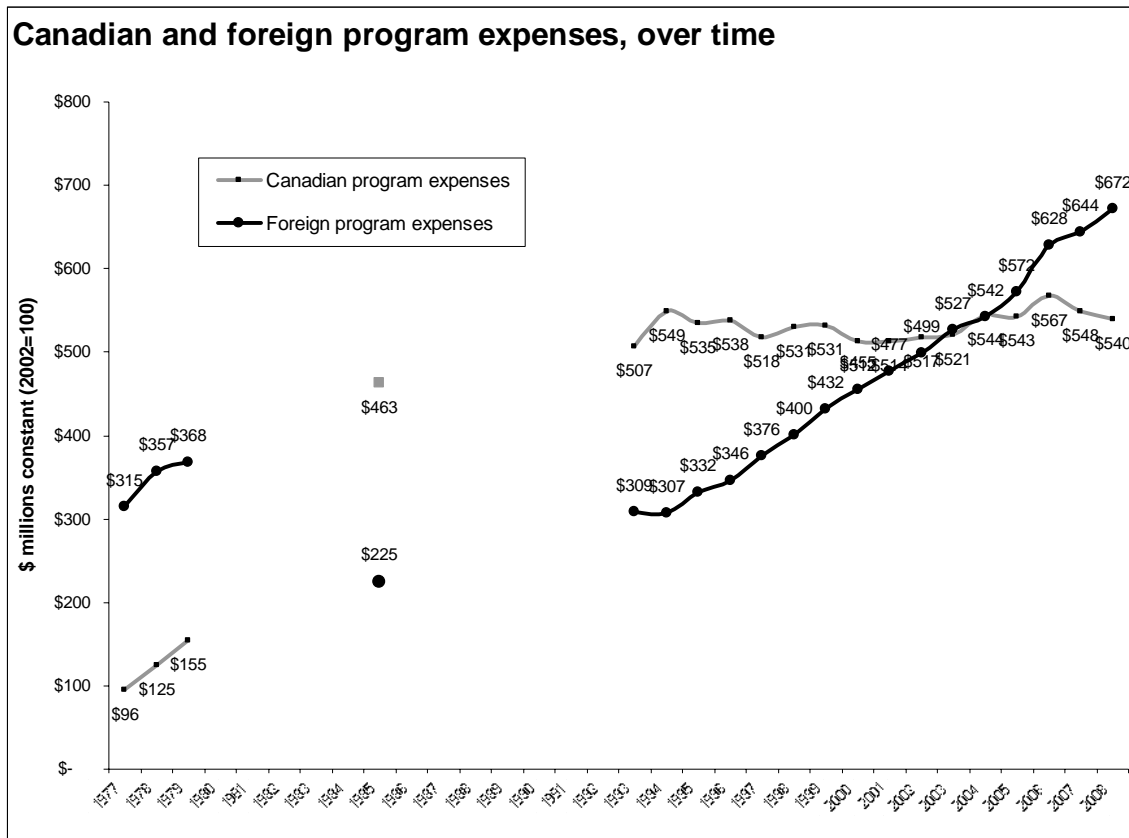
**... any benefits related to increased consolidation [of ownership] in the Canadian broadcasting system should include improvements to the quality of the programming offered, including news and information programming offered at both the local and national level.** The assessment of quality is, however, 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.**<sup>43</sup>

- 51 Instead, as ownership consolidated, fewer resources were allocated to Canadian programs and more to foreign programs:

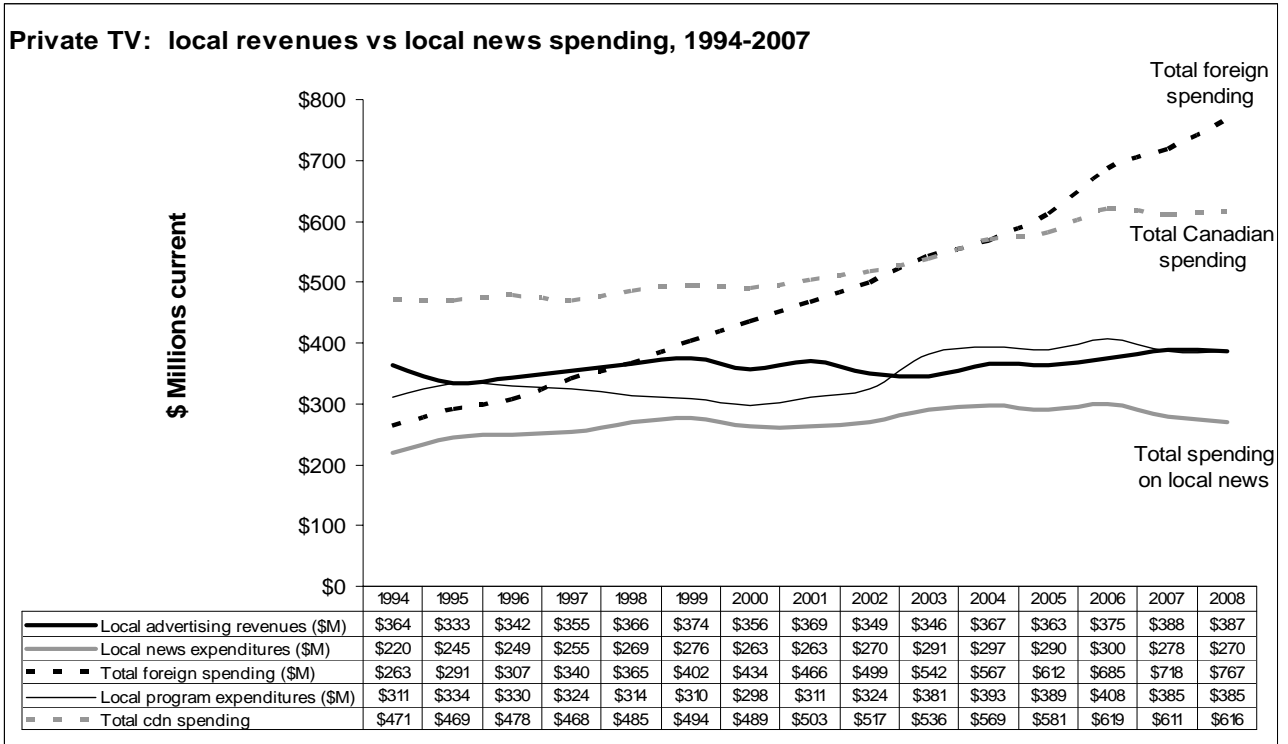
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<sup>42</sup> Kenwal Communications, *Licence Renewal Application*, Supplementary Brief, Schedule B-6 (March 1990), CRTC examination file at p. 381.

<sup>43</sup> *Diversity of voices*, Broadcasting Public Notice CRTC 2008-4 (Regulatory policy) (Ottawa, 15 January 2008).

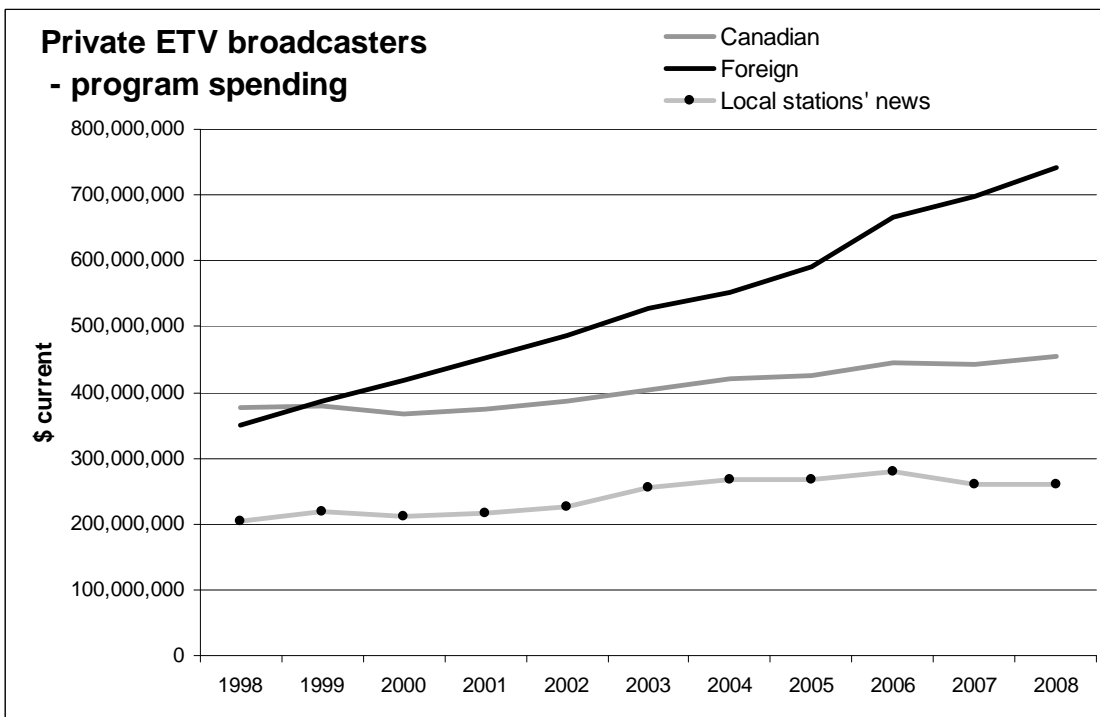


52 Even if private broadcasters claim they believe in local service, the reality is that private TV spending on local news has decreased for several years overall, and by 10% in the last two years alone. Left to themselves, broadcasters have decided to cut spending on local news, to pay for their foreign shopping trips.



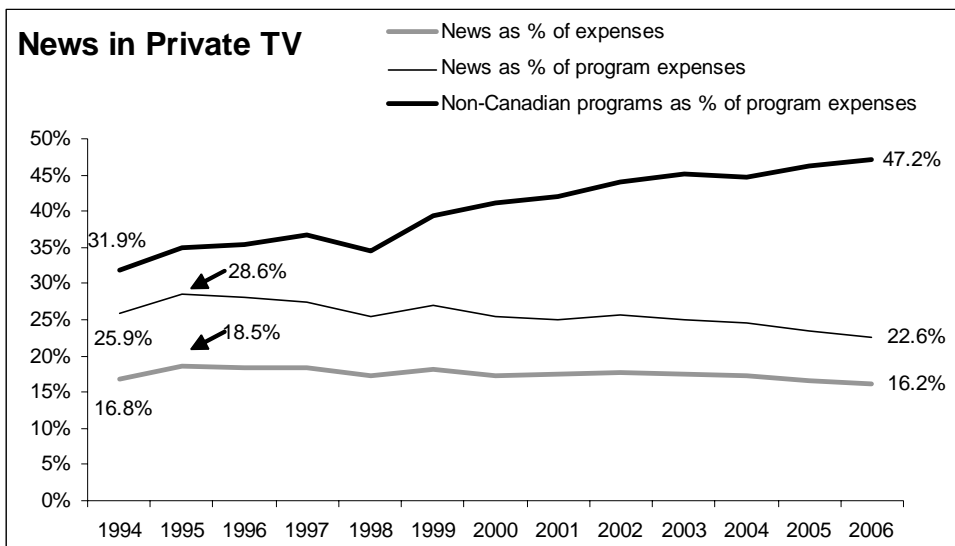
Source: CRTC annual financial summaries

53 English-language private TV broadcasters have been spending more on foreign content than on Canadian content for a decade. Foreign content now consumes the lion's share of private TV broadcasters' program expenditures.



Source: CRTC financial data

54 As consolidated media ownership increased, the proportion of revenues



allocated to foreign programs increased, but decreased for Canadian news:

55 Add in the \$5 billion worth of acquisitions that the CRTC has permitted since 2000, and it not hard to understand why some private broadcasters now want to transfer their business-investment risks to the public in the shape of reduced service to Canadian communities.

Since 2000, broadcasters have taken on over five billion in debt								
Decision	Purchaser	# of stations			Media	Location	Price (\$M)	Total, by year
		Radio	TV	Pay/Sp				
2008-73	MZ Media	1			AM	Toronto	\$7.32	
2008-72	Rogers		2		TV	Vancouver	\$61.29	
2008-71	Christian Channel		2		TV	Fraser Valley, Winnipeg	\$6.25	
2008-128	9183-9084 Quebec	1			AM	Quebec	\$0.28	\$75.14
2007-435	Corus	1			FM	Sherbrooke	\$1.10	
2007-429	Canwest			18	Specialty	Canada	\$1,369.00	
2007-359	Astral		58		Radio & TV	Canada	\$1,082.37	
2007-165	CTVgm	34	8	16	Radio, TV, Pay	Canada	\$1,700.50	\$4,152.97
2004-557	Newcap	2	2		Radio & TV	Lloydminster	\$12.55	
2004-503	TVA/Sun Media		1		TV	Toronto	\$46.00	\$58.55
2001-647	CHUM		1		TV	Vancouver	\$130.00	
2000-221	Canwest		11	2	Radio, TV, Pay	Canada	\$692.00	
2000-87	Corus	x	x				\$107.50	\$107.50
97-85	Canwest		1		TV	Quebec City	\$4.90	
96-251	Baton		2		TV	Alberta	\$75.00	

56 The reality is that the very large red herring in this proceeding is that private broadcasters' survival depends on their cuts to local programming even though

private TV stations make more money from local advertising (\$387 million) than they spend making local programs (\$385 million). In four of five regions, broadcasters' profits from local programming amounted to roughly \$50 million:

<b>Local advertising revenues and local station program production expenses</b>						
<b>2008</b>	<b>Atlantic</b>	<b>Quebec</b>	<b>Ontario</b>	<b>Prairies</b>	<b>BC &amp; Territories</b>	<b>Canada</b>
Reporting units	8	26	27	26	12	
<b>REVENUE</b>						
Local Time Sales	\$26,927,678	\$ 95,106,427	\$ 100,871,153	\$ 96,518,205	\$ 67,846,908	\$ <b>387,270,371</b>
National Time Sales	\$45,349,351	\$ 178,653,992	\$ 757,258,339	\$277,803,639	\$ 213,359,146	\$ 1,472,424,467
Network Payments	\$ -	\$ 115,551,781	\$ 1,860,904	\$ 976,460	\$ 709,566	\$ 119,098,711
Infomercials	\$ 483,957	\$ 7,805,480	\$ 9,247,455	\$ 1,718,782	\$ 2,615,373	\$ 21,871,047
Syndication- Production	\$ 364,081	\$ 11,801,117	\$ 2,803,003	\$ 4,153,480	\$ 1,860,586	\$ 20,982,267
Other	\$ 2,369,208	\$ 53,305,717	\$ 35,823,642	\$ 14,090,622	\$ 11,110,554	\$ 116,699,743
<b>TOTAL REVENUE</b>	<b>\$75,494,275</b>	<b>\$ 462,224,514</b>	<b>\$ 907,864,496</b>	<b>\$395,261,188</b>	<b>\$ 297,502,133</b>	<b>\$ 2,138,346,606</b>
<b>Local TV station productions - Canadian program expenditures, by genre</b>						
News	\$12,294,675	\$ 61,466,451	\$ 117,847,260	\$ 59,437,426	\$ 57,060,023	\$ 308,105,835
Information	\$ 1,511,513	\$ 5,614,915	\$ 20,720,784	\$ 9,982,136	\$ 7,691,901	\$ 45,521,249
Sports	\$ 11,466	\$ 546,304	\$ 1,867,228	\$ 2,631,738	\$ 541,160	\$ 5,597,896
Drama	\$ -	\$ 6,201,322	\$ 423,591	\$ -	\$ 258,510	\$ 6,883,423
Music/Variety	\$ -	\$ 2,086	\$ 57,056	\$ 65,448	\$ 122,764	\$ 247,354
Game Shows	\$ -	\$ 334,000	\$ 37,818	\$ -	\$ 74,481	\$ 446,299
Human Interest	\$ 328,134	\$ 7,185,090	\$ 7,515,764	\$ 949,407	\$ 1,232,965	\$ 17,211,360
Other	\$ -	\$ 35,529	\$ 1,064,061	\$ 19,945	\$ 143,852	\$ 1,263,387
<b>Total</b>	<b>\$14,145,788</b>	<b>\$ 81,385,697</b>	<b>\$ 149,533,562</b>	<b>\$ 73,086,100</b>	<b>\$ 67,125,656</b>	<b>\$ 385,276,803</b>
Local time sales less local productions	\$12,781,890	\$ 13,720,730	-\$ 48,662,409	\$ 23,432,105	\$ 721,252	\$ 1,993,568
Local time sales less local news	\$14,633,003	\$ 33,639,976	-\$ 16,976,107	\$ 37,080,779	\$ 10,786,885	\$ 79,164,536

- 57 We think private broadcasters are cutting local programming service simply because they can. The CRTC has not imposed conditions of licence or regulations to protect local programming.
- 58 We think the real issue is that it is simply easier and more lucrative to sell advertising in a few ready-made programs that can be broadcast and re-broadcast several times by many stations and other programming services, than to sell advertising in programs made for individual stations that cannot be rebroadcast more than once or twice by the same station.
- 59 We estimate, somewhat roughly below due to the CRTC's secrecy with respect to private broadcasters' station-by-station financials, that profit margins on non-local content (including foreign content) are substantially higher than on local programs: in the order of 38% for non-local programs, compared to 0.5% for local programs. It clearly doesn't matter to broadcasters that local programming makes money – even if it is a small amount – if their margins on non-local content are higher.

<b>Line</b>	<b>Local productions</b>	<b>Explanation</b>	<b>Local</b>	<b>Non-local</b>	<b>Explanation</b>
1	Hours/week in 2008/09	Total all private stations, from CRTC decisions & applications	899	12,961	=110 private stations * 126 hrs/broadcast week, less local news/info
2	Hours/year	Above, times 52 weeks	46,760	673,960	Above, times 52 weeks
<b>Revenues</b>					

<b>Line</b>	<b>Local productions</b>	<b>Explanation</b>	<b>Local</b>	<b>Non-local</b>	<b>Explanation</b>
3	Local	Local ad revenues (CRTC)	\$387,270,371		
4	Non-local			\$1,751,076,235	Total revenues less local ad revenues (CRTC)
<b>Revenues/hour</b>					
5	Local	Divide local revenues by total news/info hrs/year	\$ 8,282		Divide non-local revenues by total non-local hours/year
6	Non-local			\$ 2,598	
<b>Total expenditures</b>					
7	Local	All station productions	\$385,276,803		Total prod & prog exp, less local news and local information
8	Non-local			\$1,088,126,551	
<b>Expenditures/hour</b>					
9	Local	Divide total expenditures by total hours/programming	\$ 8,239		Divide total expenditures by total hours/programming
10	Non-local			\$1,615	
<b>Profit: Revenues - expenditures</b>					
11	Local	Line 3 (local ad revenues) deduct line 7 (local expenditures)	\$ 1,993,568		
12	Non-local			\$662,949,684	Line 4 deduct line 8
<b>Return on revenue (profit / revenue)</b>					
13	Local	Line 11 (local profit) divided by line 3 (local revenues)	0.5%		Line 14 (non-local profit) divided by line 4 (non-local revenues)
14	Non-local			37.9%	

60 But if the CRTC allows local programming to be cut because it does not make enough money, the CRTC will have accepted the worst yet most tempting slippery-slope intellectual proposition in Canada's cultural sector:

if the CRTC allows private broadcasters to reduce local programs  
because their profit margin is lower than for other content,  
what will stop private broadcasters from demanding  
similar reductions in non-local Canadian programming,  
for precisely the same reason?

61 If the CRTC accepts this reasoning our cultural sector is essentially doomed – because it will not matter that Parliament has enacted the *Broadcasting Act* if its delegate purports to support Canadian programming, while operating using the very principles the legislation was enacted to counter.

**C NEW REVENUES EXPEDIENTLY IGNORED**

62 Lost in the managed crises of the past year, is the fact that broadcasters are strengthening their bottom lines not just by cutting costs, but also by earning new revenues.

63 Some new revenues are unknown, because the CRTC does not report them, such as revenues from dynamic advertising and New Media broadcast advertising. Before allowing broadcasters to cut local programming, the CRTC should require broadcasters to report these data in time for the April 2009 hearing. If the CRTC does not provide Canadians with such data, they will be unable to fully understand and address broadcasters' arguments that their only hope of survival is the elimination of service to the communities they purport to serve.

- 64 Apart from unknown income, broadcasters have now convinced the CRTC to grant them access to millions of dollars months earlier than expected. The CRTC's October 2008 BDU policy opened the door to a US-style retransmission consent regime estimated to bring broadcasters more than \$90 million in new revenues.<sup>44</sup> In March 2009, the CRTC agreed to address the retransmission consent regime through regulations earlier than it had planned, at the request of private broadcasters.
- 65 Unless the CRTC or broadcasters disclose the impact of all these new revenues, it will be impossible for CEP and for other interested parties to comment on their arguments in an informed way. We note in passing, that these new revenues are in addition to the new revenues granted in the past twenty years that were also supposed to strengthen Canadian programming – but led instead to flat lined Canadian programming expenditures, and soaring foreign programming expenditures: ad-averaging, reduced restrictions on alcohol advertising, elimination of restrictions on infomercials.

### III Cutting costs: Local programming and local news are in peril

- 66 Over the coming two years, broadcasters will repeat the financial benefits of new cost-cutting measures and new revenues whose impact neither they nor the CRTC have disclosed.

#### A NEW 'SYNERGIES'

- 67 Last week the CRTC has now eliminated the firewall separating several broadcasters' print and broadcasting divisions, by moving its supervision of this division to the broadcaster-funded CBSC.<sup>45</sup> CEP maintains its objections to the CBSC, set out in its 2007 submission to the 'diversity of voices' hearing.
- 68 CEP believes that the suspension of this condition of licence will now enable Canwest to combine its print and broadcasting divisions to reduce its costs still

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<sup>44</sup> *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100 (Ottawa, 30 October 2008)  
Regulatory policy:

296. During the Proceeding, broadcasters stated that the current distant signals policy as it applies to both DTH undertakings and terrestrial BDUs was seriously flawed because broadcasters were not adequately compensated for the use of their signals as distant signals or for the harm caused by the importation of distant signals. Broadcasters therefore requested the ability to consent to and be paid for any retransmission of their OTA signals outside the priority carriage market.

297. In a study<sup>26</sup> filed with their submission, CTVgm and Canwest estimated that, in 2006/2007, the impact of the existing distant signal policy on their revenues could be as high as a loss of \$93.1 million. Of this amount, the impact of Canadian distant signals was estimated to be \$47.2 million, the balance representing the impact of the U.S. television signals and alleged non-compliance with requirements for simultaneous substitution.

<sup>45</sup> For Canwest and TVA. See Broadcasting Decisions CRTC 2009-161 to -163, (Ottawa, 27 March 2009).

- further. After all, even if the CBSC were to uphold a complaint against the company, the CBSC's second-strongest sanction is to require Canwest to run a few ads stating the CBSC's decision. Its strongest sanction – expelling Canwest from the organization – will also not achieve that goal.
- 69 The CBSC cannot require Canwest to reinstate infrastructure it has sold off. And if the CRTC were to address this matter – weeks, months, years after the fact – we respectfully submit that while it ought to, the CRTC's current direction will not order Canwest to re-instate separate infrastructure and employment positions.
- 70 The effect of the CRTC's expedient, rushed decision to approve Canwest's application to suspend the condition of licence – issued less than a week before interventions in this amendment hearing are due – is to grant Canwest carte blanche to cut more costs. Before allowing Canwest to eliminate local programming still further, the CRTC should at least ask Canwest how much money it expects to save from this change and place that information on the public record along side Canwest's arguments that it cannot make money without cutting service.

## ***B CUTS TO LOCAL PROGRAMMING***

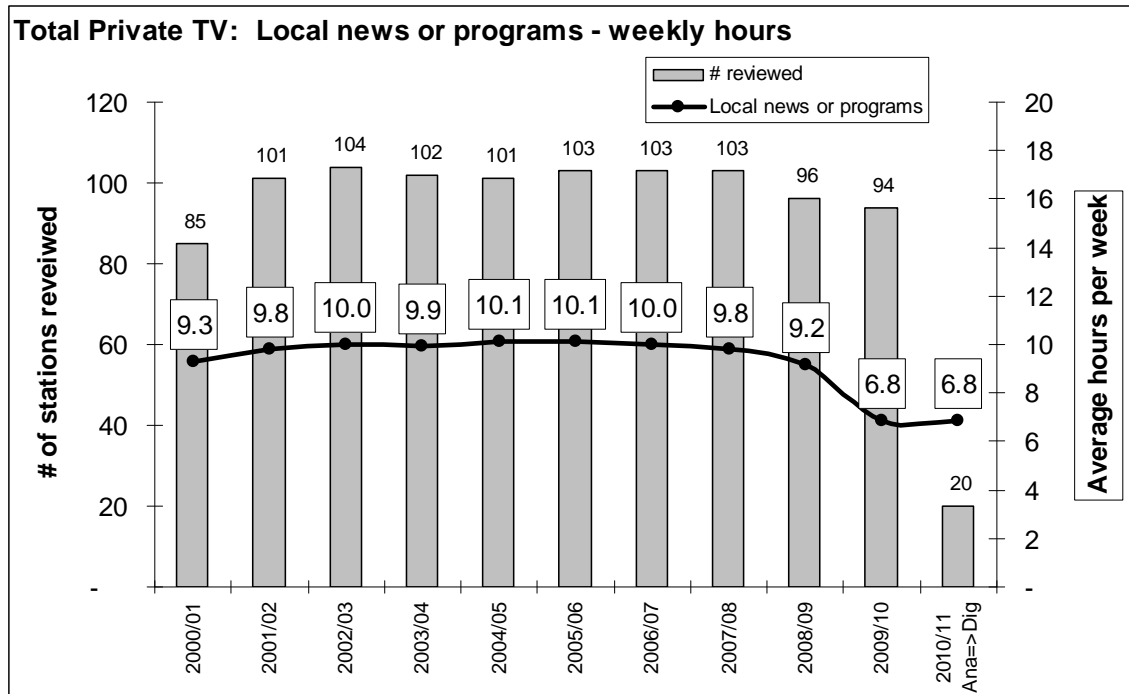
### ***1 CLOSURES AND CANCELLATIONS***

- 71 Over the past year Canada's wealthiest broadcasters have laid off staff across the country from local TV stations whose conditions of licence do not specifically address original local news and original local programming.
- 72 In most cases, broadcasters are reducing service to smaller Canadian communities where, in fact, news coverage was already at minimum levels, and from which local morning or discussion programs disappeared long ago. News clearly matters, but simply knowing "what happened at the accident, when and why" does not reflect a community to itself or to other Canadians. Music festivals, sporting events and other community activities used to be covered – and no longer are, because the CRTC has dropped this requirement.
- 73 But it is important to know that broadcasters have made these cuts in addition to previous (unregulated) cuts in many locations. In many Canadian communities, staff levels are so low that stations are not staffed on weekends. Perhaps the hope is that events and crises will be scheduled during the week and not on holidays.

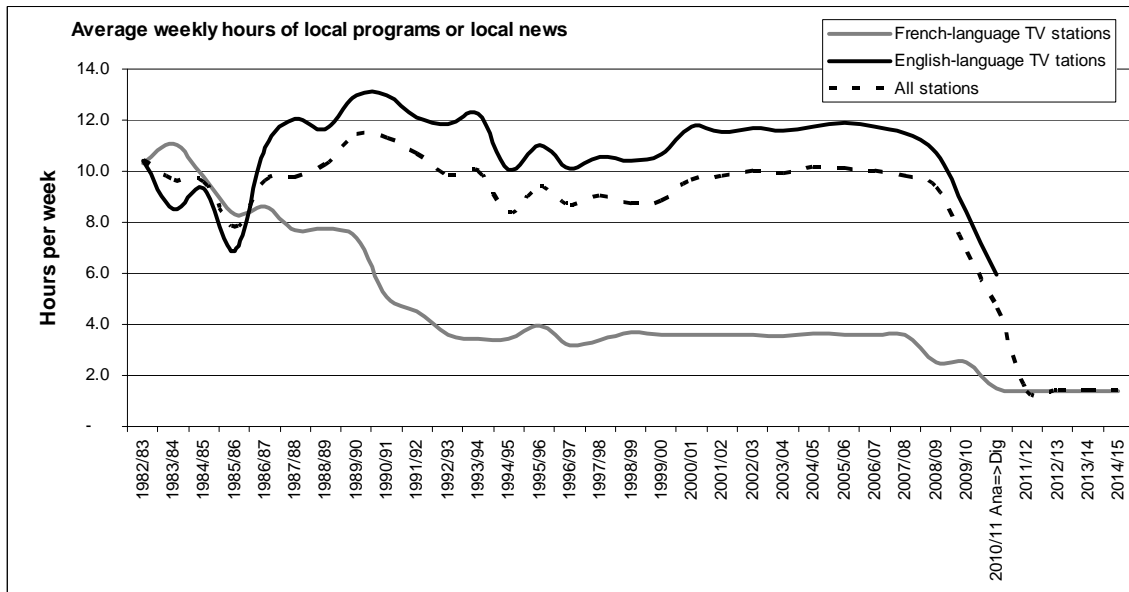
### ***2 EXHIBITION***

- 74 CEP reviewed the CRTC's licensing decisions for approximately one hundred English-language and French-language private television stations, to assess the total weekly hours of original news that they now air, and have aired in the past.
- 75 Some of our data appear in the following pages.

76 Overall, the amendments being proposed for local news and local programming represent a one-third reduction in the average weekly hours of local programming available.



77 The cuts will be particularly dramatic for English-language television audiences:





Weekly hours of local programming or local news since 2000/01

: Local programming		Unshaded: local news													
Italics: prospective hours		Non-italics: actual hours													
		Underlining: conditions of licence													
L.	Station	Location	Prov	Current owner	Market size	2006 Population	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
E	CJFB-TV (rev'd May '02)	Swift Current	SA	Revoked			7.5								
E	CJFB-TV (rev'd May '02)	Swift Current	SA	Swift Current Telecasting											
E	CJDC-TV	Dawson Creek	BC	Astral	Small	10,994	8.3	8.3	8.3	8.3	3.5	3.5	3.5	3.5	3.5
E	CJCH-TV	Halifax	NS	CTVgm	Medium	372,679	11.5	15.5	15.5	15.5	15.5	15.5	15.5	15.5	15.5
E	CJCB-TV	Sydney	NS	CTVgm	Medium	102,250	11.5	15.5	15.5	15.5	15.5	15.5	15.5	15.5	15.5
F	CJBR-TV (CBC in '77)	Rimouski	QU	CBC	Small	46,807									
E	CJBN-TV	Kenora	ON	Shaw	Small	15,177	0.50	0.50	0.50	0.50	0.5	0.5	0.5	0.5	0.5
E	CIVT-TV	Vancouver	BC	CTVgm	Large	2,116,581	12.5	16.5	15.5	15.5	15.5	15.5	15.5	15.5	15.5
E	CIVI-TV (A channel)	Victoria	BC	CTVgm	Medium	330,088	19.5	19.5	19.5	19.5	19.5	19.5	19.5	19.5	19.5
E	CITY-TV (CITYTV)	Toronto	ON	Rogers	Large	5,113,149	22.0	22.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0
E	CITV-TV-1	Red Deer	AL	Canwest	Medium	82,772	2.5	3.1	5.1	2.5	2.5	2.5	2.6	2.5	2.5
E	CITV-TV	Edmonton	AL	Canwest	Large	1,034,945	26.0	31.2	31.1	33.7	36.1	37.6	37.5	37.3	28.5
E	CITO-TV	Timmins	ON	CTVgm	Small	42,997	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
E	CITL-TV	Lloydminster	AL	Newcap	Small	16,786	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
E	CISA-TV	Lethbridge	AL	Canwest	Medium	95,196	11.5	16.0	16.1	15.3	15.6	15.4	15.2	15.4	15.0
E	CIPA-TV	Prince Albert	SA	CTVgm	Small	40,766	13.3	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
F	CIMT-TV	Riviere-du-Loup	QU	Tele Inter-Rives	Small	24,570	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8
E	CIII-TV	Toronto (Paris)	ON	Canwest	Large	5,113,149	17.5	18.2	20.2	27.5	26.7	26.6	26.6	26.7	15.5
E	CIHF-TV-1	Saint John	NB	Canwest	Medium	122,389		16.1	18.4	16.1	19.4	18.4	15.1	15.2	
E	CIHF-TV	Halifax	NS	Canwest	Medium	372,679	15.0	16.1	18.7	16.24f	19.5	18.5	15.0	15.0	15.0
E	CICT-TV	Calgary	AL	Canwest	Large	1,079,310	24.5	36.4	34.8	37.2	39.0	38.1	37.7	37.1	33.5
E	CICI-TV (MCTV)	Sudbury	ON	CTVgm	Medium	158,258		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
E	CICC-TV	Yorkton	SA	CTVgm	Small	17,438	13.3	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
E	<b>CHWI-TV (A channel) - closing?</b>	Wheatley Chatham Kent		CTVgm			10.0	10.0	7.0	7.0	7.0	7.0	7.0	7.0	7.0
E	CHSJ-TV (CBC in '94)	Saint John	NB	CBC	Medium	108,177									
E	CHRO-TV-43 (A channel)	Ottawa	ON	CTVgm	Large	846,802									
E	CHRO-TV (A channel)	Pembroke	ON	CTVgm	Small	23,195	12.0	12.0	12.5	12.5	12.5	12.5	12.5	12.5	12.5
E	CHRO-TV (A channel)	Pembroke	ON	CTVgm	Small	23,195	12.0	12.0	23.5	23.5	23.5	23.5	23.5	23.5	23.5
F	CHOT-TV	Gatineau	QU	Radio Nord	Medium	242,124	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
E	CHNB-TV - MCTV	North Bay	ON	CTVgm	Small	63,424		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
E	CHMI-TV (CITYTV)	Portage La Prairie	MA	Rogers	Small	20,494	15.1	15.1	15.0	15.0	15.0	15.0	15.0	15.0	15.0
F	CHLT-TV	Sherbrooke	QU	Quebecor	Medium	186,952	3.3	3.4	3.4	3.4	3.2	3.2	3.2	3.2	3.2
E	CHFD-TV	Thunder Bay	ON	Dougall	Medium	122,907	3.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
E	CHEX-TV-2	Oshawa	ON	Corus	Medium	330,594	9.0	9.0	11.7	3.0	3.0	3.0	3.0	3.0	3.0
E	CHEX-TV	Peterborough	ON	Corus	Medium	116,570	11.6	11.6	9.0	9.0	11.0	11.0	11.0	11.0	11.0
F	CHEM-TV	Trois-Rivieres	QU	Quebecor	Medium	141,529	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
E	CHEK-TV	Victoria	BC	Canwest	Medium	330,088	13.3	17.7	19.5	19.3	19.8	27.5	24.7	22.6	17.0
E	CHCH-TV	Hamilton	ON	Canwest	Large	504,559	29.5	31.0	31.7	32.5	32.8	39.0	37.2	35.7	29.5
E	CHCA-TV	Red Deer	AL	Canwest	Medium	82,772	6.0	13.8	13.6	12.9	13.0	14.2	15.4	14.5	9.8



78 **CEP opposes broadcasters' amendments for two simple reasons:**

79 **First: no evidence has been presented to establish that these reductions are not being made to raise profit margins for private broadcasters. As we have pointed out above, private broadcasters exist to maximize profits for their shareholders and owners.**

80 **Second: no commitments have been made to demonstrate that these short-term changes, that shift the expense of high debt to local communities in the shape of local expenditure cuts and job losses, will ever be reversed, let alone reversed in 2010.**

### 3 **DEREGULATION**

#### **a Local programming is not regulated**

81 Our review of the CRTC's licensing decisions found only 9 of 100 stations with conditions of licence regarding local programming. The remainder have 'commitments' or 'expectations'.

82 As the CRTC well knows, only conditions of licence and regulations have legal significance, because Parliament has determined that breaches of a condition of licence or of a regulation constitute offences with the possibility of substantial financial penalties.

83 Therefore, any new regime (including the LPIF) must ensure that local programming is protected through conditions of licence or amendments to the regulations. If speed is of the essence in this proceeding, we would accept conditions of licence.

#### **b Local programming is not properly defined**

84 In the majority of decisions where the CRTC mentions local programming content, the CRTC does not use clear terminology to describe licensees' proposed exhibition and expenditures.

85 Instead the CRTC uses a confusing mix of term such as "local programming" – all program episodes produced in the local station including repeat episodes, "original local programming" – first-run episodes produced in the local station, "local news" – all episodes of Category 010 programs, and "original local news" – first run-episodes of Category 010 programs.

86 Although the CRTC has repeatedly pointed to spending as one way to indicate the quality of a station's programs, its decisions provide virtually no information about an applicant's plans for expenditures on original local news over the coming licence term. Spending is not the only indicator of quality, but a newscast that has twice the resources of another for the same number and duration of episodes clearly has more resources for reporters, for example, or research. Without expenditure information, neither the public nor the CRTC can assess the

validity of broadcasters' arguments that "we made the programs but nobody wanted to watch them".

87 The CRTC almost never refers to applicants' proposed expenditures on original local news, or original local programming.

88 Therefore, in this proceeding, if the CRTC addresses local programming in its licensing decisions, it must clearly and consistently describe local broadcasters' current production, origination and exhibition of original and non-original hours of local news and local programming.

**c Local programming requirements are not enforced**

89 The CRTC does not enforce local programming requirements, but appears to rely on complaints:

**For the most part, over the current licence term, stations have succeeded in producing relevant, high quality news and information programming that continues to attract large audiences. The Commission notes that many licensees have improved this service by adding newscasts on the weekend.**

Generally, the Commission considers that private, local television broadcasters are making a valuable contribution to their communities through their news and information programs. **The Commission commends licensees on their performance and encourages them to maintain the high standards that have come to characterize this category of programming.**

With respect to the principle of local reflection in programming other than in local news, the Commission is also of the view that, overall, private local stations perform well in meeting the needs and reflecting the interests of their local audiences. **The Commission notes that there was no criticism among interveners of the performance of individual stations in this regard. The Commission reiterates the importance of the principle of local reflection and reminds each television licensee that, over the new licence term, it will remain its responsibility to meet the particular needs and interests of the public residing within the geographic area it is licensed to serve.**

The individual decisions accompanying this notice address, in more detail, how each station has met and plans to meet this requirement for local reflection.<sup>46</sup>

90 One difficulty, of course, is that very few Canadians, perhaps even very few CRTC staff, understand how to interpret local TV stations program logs. The CRTC does not itself publish total hours of original local news being aired each year, by station. In fact, the CRTC seems determined to look the other way when instances of regulatory non-compliance are brought to its attention, even when conditions of licence and the *Act's* requirements of the *Act* have been

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<sup>46</sup> *Introduction to Decisions Renewing the Licences of Privately-Owned English-Language Television Stations*, Public Notice TV 1995-48 (Ottawa, 24 March 1995).

breached. We refer here, to the CRTC's approach to CHUM's breach of its conditions of licence regarding news – when the CRTC directed CEP to wait until the next licence proceeding. As we noted in our introduction, however, that proceeding will now only occur in 2010. Should Canadians simply hold their collective breath for another year, waiting for the CRTC's actions to correct broadcasters' non-compliance?

91 Therefore, if the CRTC addresses local programming in its licensing decisions in this proceeding, it must frame these decisions to ensure that it is able to enforce the programming requirements it believes broadcasters should meet.

92 If it does not establish enforceable programming requirements, we fear the result will be a sham exercise that achieves little to protect the public's interest.

#### **4 WHY HASN'T DEREGULATION WORKED?**

93 Why, then, are Canada's private broadcasters killing off the programming that makes money for them?

94 The CRTC's deregulatory steps of the past twenty years have not strengthened Canadian broadcast news, but weakened it by failing to establish any measurable objectives against which broadcasters' performance could be assessed. Without measurement, the CRTC cannot supervise the broadcasting system to ensure Parliament's objectives are met.

95 Measureable objectives fixed by regulation or condition of licence are the only tools available to the CRTC to serve its mandate and to address imminent crisis in local news, because broadcasters do not operate charities that permit them to spend money on activities that reduce the profits of their owners or shareholders. Only regulations or conditions of licence ensure that broadcasters will spend money on Canadian programming.

### **IV New revenues: The LPIF is a patch, not the cure**

#### ***A NEW REVENUES IN 2009 AND 2010***

96 In the last several years the CRTC has granted broadcasters access to new revenues. In the 2007 TV policy, for example, the CRTC eliminated advertising limits effective this coming September 2009, and advised that it would review the impact of this change in the then 2008-licence renewal hearings.

46. The Commission intends to review the impact of the increased advertising time limits during the licence renewal hearings in the Spring of 2008 to ensure the increased flexibility results in a net benefit to the broadcasting system.

47. The Commission notes that it will retain its regulatory oversight of advertising content, and that broadcasters must continue to adhere to all applicable industry standards and codes. Since popular foreign programs already contain more than 15 minutes of program interruptions in each hour, increasing the hourly advertising limit from 12 minutes should not result in an increase in program interruptions.

48. The Commission expects that the additional revenues resulting from this measure will enable conventional television licensees to increase their contributions to the production and exhibition of Canadian programming.<sup>47</sup>

97 In October 2008 the CRTC granted broadcasters' requests for additional income from BDUs. As well as the existing unknown revenues obtained from the Small Market Fund which they will retain, broadcasters will now be able to negotiate payments from BDUs for the retransmission of non-mandatory signals:

296. During the Proceeding, broadcasters stated that the current distant signals policy as it applies to both DTH undertakings and terrestrial BDUs was seriously flawed because broadcasters were not adequately compensated for the use of their signals as distant signals or for the harm caused by the importation of distant signals. Broadcasters therefore requested the ability to consent to and be paid for any retransmission of their OTA signals outside the priority carriage market.

297. ... CTVgm and Canwest estimated that, in 2006/2007, the impact of the existing distant signal policy on their revenues could be as high as a loss of \$93.1 million. ...

...

303. The Commission recognizes the value that Canadian subscribers place on the ability to time shift through the use of distant signals. It also recognizes that broadcasters should have the right to be compensated for the use of their signals when they are retransmitted by a BDU outside the priority carriage market.

...

307. Accordingly, the Commission's policy with respect to Canadian distant signals will be to require all licensed BDUs to obtain the consent of OTA licensees prior to distributing their local stations in a distant market. OTA licensees will be permitted to negotiate payment from BDUs for the retransmission of their local stations as distant signals. However, DTH undertakings will not be required to obtain consent or pay fees for the distribution of mandatory basic OTA services (i.e., those services that the DTH undertaking has chosen to distribute on basic as a result of the new basic distribution regime set out earlier in this public notice) from a given province to subscribers within that province. In the case of the Atlantic provinces, no consent will be required for the distribution of mandatory basic OTA services originating in any of the four Atlantic provinces to subscribers within any of those four provinces.

308. The Commission determines that the DTH Fund, which is designed to compensate independently-owned small market broadcasters for damage resulting from the impact of DTH distant signals, will be retained. The Commission expects that the benefits to

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<sup>47</sup> *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53 (Ottawa, 17 May 2007).

those broadcasters with access to this fund will be considered in the negotiations for any retransmission of their signals.<sup>48</sup>

98 Moreover, private broadcasters' enjoy revenue from several other areas which they apparently do not report. Local TV stations already access some funding from BDUs through the CAB, but this revenue is not broken out by the CRTC's financial summaries:

295. Currently, digital terrestrial BDUs are also authorized to carry distant Canadian signals and a second set of U.S. 4+1 signals, as digital discretionary services, subject to a requirement to perform non-simultaneous program deletion. These deletion requirements have been suspended as a result of an agreement to pay affected broadcasters compensation for the impact of distant signals on local and regional television stations. This agreement includes:

- payment to broadcasters of \$0.25 per month for each subscriber who receives a second set of U.S. 4+1 signals, and
- payment to broadcasters of \$0.50 per month (in some cases \$0.75 per month) for each subscriber who receives distant Canadian signals.

These payments are made to the CAB, which redistributes these funds to its members using a formula agreed to by those members.<sup>49</sup>

99 The CRTC's financial summaries also do not report the revenues received by broadcasters from the has declined to regulate dynamic advertising and New Media advertising. Without these revenue data, how do we know what local TV stations' true financial picture is? How will we be able to assess the true impact of a proposal such as the CRTC's LPIF?

## ***B QUESTIONS RAISED BY THE LPIF***

100 Although CEP supports in general the original concept of the LPIF, serious issues that limit its ability to achieve the CRTC's objective have not been resolved.

### ***1 ISSUE 1: BROADCASTERS HAVE NOT MADE THEIR CASE***

101 Instead of allowing Canadians to examine general financial statements of individual television stations, in the same way that Canadians can review the financial statements of the CTV Newsnet and Canwest Mystery specialty programming services, the CRTC has told Canadians it will give them access to financial data for each broadcaster as a whole, for all the broadcaster's holdings, by medium. Oddly, even though the CRTC itself has these data, it requires

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<sup>48</sup> *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100 (Ottawa, 30 October 2008) Regulatory policy.

<sup>49</sup> *Ibid.*

broadcasters to make these aggregated return statements available, and broadcasters have not done so since the CRTC made its first request in October 2008.

102 Apart from broadcasters' general statements and carefully redacted and extremely limited financial information, no evidence exists to establish the need for the changes being proposed to the CRTC's local programming requirements, or the specific details of how the changes will actually improve individual stations' local news and non-news programs.

103 With respect, the LPIF's implementation through an amendment to the CRTC's regulation may be susceptible to legal challenge due to the CRTC's failure to approach this issue with the requirements of due legal process.

**2 ISSUE 2: THE LPIF WILL REWARD LARGE STATIONS AT THE EXPENSE OF SMALLER ONES**

104 The CRTC has converted a proposal designed to shift money to small stations – even stations licensed to large, well-off broadcasters – to one that gives the most money to large stations.

105 The CRTC's policy will direct the LPIF funds based on stations' past expenditures: the higher a station's expenditures on news in the past three years, the higher will be the station's share of the LPIF funds.

106 This plan will simply reward stations in larger urban centres that spend more than stations in smaller urban centres. CEP cannot provide the CRTC with an estimate of the impact of the LPIF, however, because the CRTC refuses to disclose station by station data. Perhaps the most important question is this: will the existence of the LPIF prevent the announced closures of any local television stations this year?

107 Even without the station-by-station data, however, it seems to CEP that the result of this plan is irrational: instead of ensuring the survival of original local news in small communities with reduced levels of income, the fee will be directed at stations in larger communities.

**3 ISSUE 3: THE GOVERNMENT HAS NO PLACE IN THE NEWSROOMS OF THE NATION**

108 The CRTC is, in our view, attempting to avoid the introduction of a fee for local programming service, to avoid any appearance that it is imposing a tax on subscribers to support local news. A fund might appear different from a tax on its face. And it is true that the federal government's fund to support non-news Canadian programming has been very successful.

109 A significant difference between the government's support of drama, is that the proposed LPIF will be directed in part at news – an entirely different kind of programming content, whose role is critical in our society and our political system.

- 110 News and information that are independent of government, constitute the cornerstone of democracy. Establishing the LPIF will introduce the perception that the federal government is paying for local news coverage. We do not believe that it is in the public interest to diminish the perception of independent news-gathering organizations in Canadians' eyes.
- 111 The *Act* requires broadcasters to provide Canadians with news and information, and it is the CRTC's role to ensure that sufficient broadcasting competitors exist in every location that they will also compete to cover local news. It is the competition for news that guarantees Canadians' democracy – and the CRTC can require, by establishing base thresholds for original weekly hours of news tied to a local programming service subscriber fee, that broadcasters provide such news.

**C THE LONG-TERM CASE FOR A FEE FOR LOCAL SERVICE**

- 112 In addition to the LPIF proposal to subsidize larger stations at smaller communities' expense, CEP believes that the CRTC should introduce a subscriber fee for local service. CEP supported the general concept of a subscriber-based local programming fee when it appeared before the CRTC at the 2008 BDU hearing.
- 113 We believe that the fundamental principle to support such a fee, is that it be directly and explicitly linked to a specified minimum level of hours of original local news provided each week to communities that local TV stations are licensed to serve. Moreover, some communities require additional non-news local programming, to reflect their unique circumstances.
- 114 Our communications system now includes both fixed bricks-and-mortar infrastructure for program production and delivery, and more nimble systems of program production and delivery. Each serves the key industrial objective of any government: employment. The problem in our system now, is that the regulatory system has ignored employment when regulating programming. There seems to be a belief that a one-person bureau can produce a one-hour newscast of the same quality as a local TV station with producers, directors, researchers, reporters, technicians and anchors. This is simply not true, any more than a one-person webcast has the same quality as a full-length feature film such as *Bon Cop, Bad Cop*.
- 115 Canada's communications systems is evolving so that content providers earn revenues from two sources: subscriber fees and advertising. Consumers pay these costs, directly and indirectly. The fact that the producers of goods and services include their advertising costs in the price of the goods and services acquired by consumers, still means that consumers pay these costs – the costs are simply 'invisible'.
- 116 The difference in the broadcasting system is that it must be transparent, but is not. Consumers do not know where the money on their BDU bills is directed – to the BDU to improve the quality of its service? To the BDU to increase its profits? To the BDU to pass through to programming services? Consumers simply do not know – and in our view, they should.

- 117 Our members are consumers too. They do not want their monthly BDU bills to increase any more than any other consumer. On the other hand, BDUs freely charge consumers more, and it is unclear what consumers receive in return for such rate increases. It is unclear why governments must carefully justify their use of public funds, while regulated communications undertakings need not, on the illusory ground that these undertakings operate in a competitive marketplace, when the reality is this: they have received the privilege of a valuable licence issued to very few.<sup>50</sup>
- 118 Canadian programming services earn income through subscriber fees and advertising. Only programming services delivered by satellite obtain subscriber revenues, but they also earn national advertising income because without that income, subscriber fees would be high and uptake might be low. Programming services delivered OTA earn advertising income but receive no subscriber fees.
- 119 A stranger to this country today might well wonder why these distinctions exist. They would not understand the development through history and technological change that created these distinctions. For example, when television first emerged in Canada it was delivered for a short time entirely over the air, and no mechanism readily existed to impose fees for service. ‘Set’ fees, imposed originally in the early 1920s and which are still used in the United Kingdom, were dropped in Canada in April 1953.<sup>51</sup> Although the CRTC in 1971 suggested that cable system operators should pay local television programming services, on the grounds that “one should pay for what he uses to operate his business”,<sup>52</sup> it did not attempt to enforce this view through regulation or conditions of licence. Nor, at the time, could the CRTC have easily required subscribers to pay for local programming services. The technology did not readily exist in the 1970s for BDUs to differentiate among their customers and charge different amounts, depending on the programming services they received.
- 120 The first of what are now pay or specialty programming services<sup>53</sup> was introduced by BDUs in early 1976, when Network One Inc., a closed circuit

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<sup>50</sup> *Canadian Association of Broadcasters v. Canada*, 2008 157 FCA at ¶92:

... the licensing function of the Commission is an essential element of the regulatory scheme embodied in the Act and the Regulations. In carrying out that function, the Commission is empowered to confer material benefits on successful applicants for licences. Those benefits are in no small part due to the restricted levels of competition in the Canadian broadcasting industry. In granting the benefits that flow from the privilege of holding a licence, the Commission is, and must be, aware that a consequence of the restriction on the level of competition in that industry is likely to be that licensees will be able to derive higher revenues than they would if full-blown competition in that industry was permitted. It follows, in my view, that the Commission has a duty to ensure that the valuable benefit of a licence is not “given away” to licensees.

<sup>51</sup> Frank Foster, *Broadcasting Policy in Canada*, at 154; CBC, *Annual Report 1952-53*, p. 5.

<sup>52</sup> *Canadian Broadcasting: “A Single System”*, Policy Statement on Cable Television (Ottawa, 16 July 1971) at p. 21 (original underlining removed).

<sup>53</sup> More specifically, “Pay-Television programs” and “(Satellite to Cable) Programming Undertakings”, as set out in *New Broadcasting Act – Amendments to Classes of Licence*, Public Notice CRTC 1991-63 (Ottawa, 19 June 1991), Appendix.

programming service, offered 1,419 condominiums in a new housing development in Toronto, Ontario per-program pay TV, featuring first-run feature films at \$3.50 each. The CRTC declined to develop a policy for pay television and to begin licensing pay television in 1978, however, because the proposals it had received in 1977 would not ensure that predominantly Canadian resources would be used to develop Canadian programming for pay television.<sup>54</sup> The CRTC did not license Canada's first pay television services until 1982.<sup>55</sup>

- 121 Around the time that BDUs were developing models to enable pay television to exist, local television broadcasters also made their first requests for local programming service fees. In *George S. Skinner, representing a company to be incorporated*, Decision CRTC 81-239 (Ottawa, 8 April 1981), the licensee of CKBI-TV Prince Albert, Central Broadcasting Company Ltd., asked the CRTC to require a proposed new BDU service to make "revenue stabilization payment" to CKBI-TV:

... as a condition of licence to offset the impact of the new [BDU] service. In this regard, the applicant proposed to charge subscribers an additional \$0.25 per month for payment to local television broadcasters.

- 122 The CRTC denied this 1981 fee for local programming, however, because it did not believe that allowing new programming services to access local audiences via BDUs would affect the station's long term viability, and also because another broadcaster's cross-media ownership interests in the BDU system would reward that broadcaster with additional income:

[i]n the Commission's view the long-term viability of the local broadcasters, including Central Broadcasting Company Ltd., should not be jeopardized by the presence of the cable service, and it considers that a revenue stabilization payment is not warranted. Also, with regard to the intervention by Mr. R.C. Skinner of Yorkton Television Co. Ltd., who also requested a revenue stabilization payment, the Commission considers that Yorkton Television's controlling interest in the new cable system will provide the intervener with sufficient compensation and again finds that the proposed payment is not warranted. ...

In another decision issued within a week of Decision CRTC 81-239, the CRTC referred to another television broadcasters' 30% interest in a BDU company as sufficient grounds for not granting a 'stabilization' payment.

- 123 BDUs have had the capacity to distinguish among customers and charge customers different amounts depending on the programming services they receive since just before 1980. The CRTC denied over-the-air television broadcasters' requests during the 1980s and 1990s for subscriber income, because they did not make a clear case to support their arguments.

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<sup>54</sup> See the CRTC's *Report on Pay Television* (Ottawa, 13 March 1978).

<sup>55</sup> In *Pay Television*, Decision CRTC 82-240 (Ottawa, 18 March 1982), the CRTC granted 6 pay television licences (First Choice, Allarcom's Alberta Independent Pay Television, Ontario Independent Pay Television, Star Channel Services Ltd., Lively Arts Market Builders Inc., and World View Television).

- 124 The approaching analog-to-digital conversion represents a shift in Canadians' ability to receive programming services. It also marks a new opportunity to review the CRTC's approach to regulating revenues of Canada's programming services. The absence of the Working Group's report in this area makes it particularly difficult for interested parties to understand the timing and costs involved, and is another reason why the CRTC should have deferred this hearing until this summer, when, one assumes, the report would have been available.
- 125 That said, let us assume for the sake of this argument that once OTA television broadcasters convert from analog transmission to digital transmission, virtually all Canadians will only be able to receive these signals through a BDU.
- 126 CEP proposes that this transition – occurring when OTA TV broadcasters 'flip the switch' to digital – is the appropriate time to introduce a fee for local programming service. Services that offer 'national'-level programming should earn their income and support that programming from national-level revenues, and services with 'local' programming should earn income and support their local programming from local-level revenues. Under CEP's proposal, only programming services that provide original local programming could access local advertising revenues and local programming service fees to support this local programming.

## **V CEP's consumer-choice, fee-for-local-service proposal**

- 127 Perhaps the most important element of our proposal is that the CRTC ensure that any local programming subscriber revenues obtained by local TV stations be directed primarily towards the local TV station itself – and not towards its owner's head office or their shareholders. A broadcaster that proposes to transfer local programming service fees to its owners to pay, for example, "management fees" or other transfer-to-head-office schemes, should be prohibited from collecting the local programming subscriber revenues.
- 128 The local programming service fee that CEP proposes must meet several regulatory criteria:
- a) a complete and detailed regulatory framework established and supervised by the CRTC
  - b) benchmarks established by the CRTC through a public proceeding to establish that local programming content exists and improves in quality over time
  - c) published actual and well-prepared estimates of the station-by-station costs of high-quality local news, and
  - d) the requirement through a condition of licence that local programming undertakings provide local news if they benefit from local programming subscriber fees.
- 129 A fee that does not meet these criteria, would in our view resemble an illegal tax more than an attempt to support local TV stations. As the CRTC clearly does not

- want to impose an illegal tax, but wants instead to support local TV stations, our proposal merits consideration.
- 130 CEP believes that its proposal to introduce a subscriber regime for local programming services will address fundamental problems that now exist in our broadcasting system. Let us be clear: local service involves more than a newscast. It involves matters such as 24/7 staffing, because our broadcasting system is not simply a way to make money for a few large companies, but the only system of mass communication Parliament has to protect Canadians in local communities in times of physical crisis.
- 131 Imagine if 9/11 had occurred in Canada on a weekend: with today's staffing levels, there would not even be a camera person available in some stations to shoot the footage, let alone reporters to provide context and information as these became available. And in some stations, permission would first have to be obtained from another part of the country altogether, just to interrupt current programs.
- A** ***RECIPIENTS OF LOCAL PROGRAMMING SUBSCRIBER REVENUE: LOCAL STATIONS THAT ORIGINATE ORIGINAL NEWS AND NON-NEWS CONTENT***
- 132 When the analog-to-digital transition occurs, broadcasters that the CRTC licenses to serve specific communities, should be granted the right to charge a fee for local service. Such broadcasters most provide local programming that includes original news and original non-news content.
- 133 Non-news content matters because local community reflection involves more than day-to-day breaking news stories: it involves the reflection of a community's interests and activities in other ways. The CRTC need not provide specific requirements about the topics of such programs, any more than it provides specific details to cable systems' community channels, because broadcasters will be sufficiently engaged with their communities to develop creative proposals. What will matter, however, is broadcasters' knowledge that the CRTC will actually be monitoring their activities in these areas.
- 134 Only broadcasters that offer specified hours of local service, including a significant and appropriate amount of original local news originating from the local TV stations themselves, should be able to sell local advertising. It would provide an incentive for over-the-air broadcasters to maintain, improve or create local news.
- 135 Canadians should have the right to opt out of all non-local programming services. This would cut their cable bills.

**B** ***DEFINING OUR TERMS***

- 136 The CRTC has a clear understanding of what a Canadian drama is. It uses a points-based definition that addresses employment, control and location, to ascertain whether a dramatic or comedic series is or is not Canadian.

- 137 The CRTC does not regulate the plot, theme or ‘Canadianness’ of a Canadian drama, on the theory that a
- 138 The same approach can be used for a local newscast. The CRTC should define a local newscast as follows: A local newscast that purports to originate from a local community should be originate in its entirety from that local community to the public and should
- employ reporters, writers, researchers and anchors living in the local community to address matters that involve and affect the local community
  - be controlled in its entirety by directors, producers and technical staff living in the local community
  - address the events and issues of concern to the local community.
- 139 Only stations that offer local newscasts should receive a fee-for-local-service.

### ***C IMPLEMENTATION***

- 140 CEP believes that its local programming subscriber proposal meets the CRTC’s timing criteria. The CRTC could address our proposal at the April 2009 licence-amendment hearing, and/or it could add the proposal to the agenda of the summer 2009 hearing, by which time Canadians should know when the analog-to-digital transition will really occur. We note that CTV agreed, calling on the CRTC to address all substantive issues in the current proceeding, in the review this summer.<sup>56</sup>
- 141 If adopted through a public notice, the CRTC could then add questions about the proposal to its local TV station licensing and licence renewal forms. Broadcasters could complete those forms for the April 2010 hearing, and include prospective revenues not only from retransmission consent and internet broadcasting to their financial forecasts, to help establish the level of a local programming subscriber fee.

## **VI The CRTC should deny Canwest applications**

### ***A THE CRTC’S POLICY ON REGULATORY COMPLIANCE AND LICENCE AMENDMENTS***

- 142 We understand that serious complaints about the performance of Canwest since its licences were last formally reviewed in full, remain on the public record. CEP’s own complaint about Canwest involve its elimination of local programming

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<sup>56</sup> CTVgm, *Re: Broadcasting Notice of Consultation 2009-70 – Withdrawal and Re-Filing of Licence Renewal Applications for CTVglobedia Inc.’s Over-the-Air Television Stations and the Atlantic Satellite Network*, (23 February 2009) at 2 (“Scope of the Proceeding”).

- and decision to implement a centralcasting model<sup>57</sup> by shifting local news production to four unlicensed broadcast centres.
- 143 The question the CRTC must ask itself in this licence amendment proceeding, is whether Canwest is in compliance with the CRTC's policies and regulations. We do not believe it is. In some stations, even in locations as large as Vancouver, Canwest's local TV station does not make crews available to cover news for much of the morning and afternoon. In others, repeat news broadcasts are being used to complete as much as a third of local programming requirements. Do these changes, in the CRTC's view, constitute compliance with the terms under which Canwest was granted its licences?
- 144 CEP opposes Canwest's applications to amend its licences since it has not demonstrated that it is currently complying with the current terms and conditions of its licences. Moreover, we oppose these applications because Canwest itself has told its staff that the information it has filed with the CRTC is inaccurate. Part of a Canwest memo from March 3, 2009 to staff includes this comment:

One of the points surrounding Local Programming was the fact that Canwest has asked for a minimum number of local programming hours that we should be committed to. And Canwest has asked for 10 hours in our large market stations and 5 in the small markets. This would give Canwest a consistent commitment across all our stations and give those stations that need it much greater flexibility in their markets, especially where their commitments have not been profitable. And as such, part of

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An American article from 2006 sets out some of the salient features of centralcasting:

Early next year, the local news on an NBC-owned Telemundo station might lead off with a story on a massive fire or brazen robbery in the market, then cut to regional and national headlines. What the viewer might not realize is that big chunks of those "local" news programs will come from a centralized operation in Dallas, which NBC is opening to funnel content to many of its Telemundo stations. As part of NBC's plan to cut 700 jobs and save \$750 million, the corporation is overhauling local news at a half dozen of its Telemundo stations.

...

NBC says the changes will improve efficiency and news quality. But critics feel that centralized news operations run the risk of homogenizing the product in an already underserved Hispanic market. Under the plan, newsrooms in six markets will be downsized into bureaus. Remaining reporters and photographers will contribute stories and cut-ins to the newscasts, and a number of jobs will be eliminated. NBC, which owns 15 Telemundo stations, will say only that the cuts represent 5% of the network's workforce, but they're expected to include on-air talent, producers and technical operators. NBC-owned outlets in San Jose, Calif., Houston, Dallas-Ft. Worth, San Antonio, Phoenix, and Tucson, Ariz., will shutter local news operations and take one of three regionalized feeds for early-evening and late news from the new Telemundo Production Center. The stations will still be able to insert stories from reporters in their markets.

...

Given such realities, NBC's new central-casting strategy for Telemundo may work, says the network's former Executive VP of News Joe Peyronnin. "Rather than having each station strain to do all the reporting necessary for a newscast, you can focus your resources and have more quality."

But any effort to centralize local news rouses critics. Several years ago, Sinclair Broadcast Group opened a much-publicized news center in Baltimore to provide content, including controversial political commentary, to many of its stations. Activists in many markets rallied against the NewsCentral model, saying it stripped out localism. Sinclair scaled back the operation last fall and now contracts other stations to produce its news.

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Allison Romano "NBC Cuts Hit Telemundo: Some stations' newsrooms to be closed, news centralized" *Broadcasting & Cable* (10/30/2006)

the requirements with a CRTC application of this type, is that you must submit a corresponding Schedule Proposal that would reflect this Local Programming commitment. In Canwest's application there is an example of what a Global ... program schedule would look like if we were to only do 10 hours. This schedule shows a number of our popular local news programs off the schedule and as one might expect, clearly raised concerns when some staff came across this.

- 145 Employees were then told at at least one station that it was not Canwest's intention to reduce any of its highly successful local programs, because in part its local news properties are profitable, and Canwest's goal is to improve its profit margins by selling more ads in these programs through its conventional and online advertising venues, and that employees could disregard the details fo the applications.
- 146 What this conveys, in our view, is that Canwest itself pays little or no attention to the commitments it makes to the CRTC in its applications.
- 147 CEP proposes that the CRTC transform Canwest's current local programming "commitments" and "expectations" into measurable and enforceable conditions of licence of licence, and that it require Canwest to disclose monthly statistics about its local programming service each month on its website.
- 148 In the alternative, if the CRTC decides to accept Canwest's proposals contrary to CEP's strong objections, CEP urges the CRTC to translate any original local programming requirement into clear, enforceable conditions of licence, to enforce these conditions over the next 12 months, and to state clearly that these requirements will reviewed and strengthened in 2010.

## ***B*** ***COMPETITIVE LICENSING***

- 149 For several years CEP has advocated that the Commission examine its licensing system. Despite many public commitments to 'diversity of voices', the CRTC has allowed broadcast media ownership to become highly concentrated. The result is that programming services that purport to compete with each other, are often on the same 'team', as they share common ownership.
- 150 By allowing highly consolidated media ownership, competition in Canadian broadcasting has decreased – simply because there are fewer competitors. In English-language private television today, two companies obtained 90% of the total revenues in this sector – leaving the remaining ten or eleven private broadcasters that remain to compete for the remaining 10% of revenues.
- 151 If the CRTC's own resources or ideological proclivities demand that it reduce its regulatory oversight, the best alternative the CRTC could adopt would be competitive licence renewals: if a broadcaster were aware that prospective applicants for its frequencies were watching, and that regulatory non-compliance would suffice to trigger the right to submit competitive applications to use its frequency with commitments to improve programming quality to the audience being served, a broadcaster might be more inclined to adhere to the CRTC's regulations and its own conditions of licence.

- 152 CEP formally requests that if the CRTC proceeds with its summer 2009 licensing policy hearing, that it add competitive licence renewals to its agenda.