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October 22, 2007

VIA FAX

Canada Industrial Relations Board  
4<sup>th</sup> Floor, 240 Sparks Street  
Ottawa ON K1A 0X8

Attention: Ms Joanne Boyer

Dear Sirs/Mesdames:

Re: In the matter of the *Canada Labour Code (Part I - Industrial Relations)* and applications filed pursuant to sections 18, 18.1 and 35 of the Code by the Communications, Energy and Paperworkers Union of Canada, applicant; and Global Television Network Inc., Global Communications Limited, CanWest Interactive Company (2846551 Canada Inc.), CanWest Television Inc., CanWest Global Communications Corp., CanWest Broadcasting Ltd., CHEK owned and operated by Global Communications Limited, CHAN (BCTV) owned and operated by Global Communications Limited, CHBC owned and operated by Global Communications Limited, CICT (Global Calgary) owned and operated by Global Communications Limited, CITV (Global Edmonton) owned and operated by Global Communications Limited, CISA (Global Lethbridge) owned and operated by Global Communications Limited, CFSK owned and operated by CanWest Television Inc., CKND Television, a Division of CanWest Television Inc., Cliff (Global Ontario) owned and operated by Global Communications Limited, CIHF (Global St. John) owned and operated by Global Communications Limited, and CIHF (Global Halifax) owned and operated by Global Communications Limited, employers. (22170-C)

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In the matter of the *Canada Labour Code (Part I - Industrial Relations)* and an application filed pursuant to sections 18, 18.1 and 35 thereof by the Communications, Energy and Paperworkers Union of Canada, applicant; and Global Television Network Inc., Global Communications Limited, CanWest Interactive Company (2846551 Canada Inc.), CanWest Television Inc., CanWest Global Communications Corp., CanWest Broadcasting Ltd., CHEK owned and operated by Global Communications Limited, CHAN (BCTV) owned and operated by Global Communications Limited, CHBC owned and operated by Global Communications Limited, CICT (Global Calgary) owned and operated by Global Communications Limited, CITV (Global Edmonton) owned and operated by Global Communications Limited, CISA (Global Lethbridge) owned and operated by Global Communications Limited, CFSK-TV, a Division of CanWest Television Inc., CKND Television, a Division of CanWest Television Inc., CIII (Global Ontario) owned and operated by Global Communications Limited, CIHF (Global St. John) owned and operated by Global Communications Limited, CIHF (Global Halifax) owned and operated by Global Communications Limited, and CHCH Hamilton, a division of Global Communications Limited, employers. (25183-C)  
Our Matter No. 0057857 KDL

We are counsel for the Respondent Employers (the "Employers") in relation to the above noted Application.

The Applicant Union (the "Union") seeks interim relief and orders as set out more particularly in its Application. It is the Employers' respectful view that none of the requested interim orders are necessary or appropriate and in the circumstances, the Application ought to be dismissed.

#### Union Misrepresentations

In making its Application, we continue to be concerned that at times the Union misrepresents the facts and the positions being advanced by the Employers before the Board. In particular, we note that the Union continues to infer (and at times goes beyond an inference) that somehow the Employers have misrepresented facts before the Board. In particular, the Union suggests that the evidence of the Employers as to their "local economic business model" and their decisions with respect to Master Control have been inaccurate. Nothing could be further from the truth and we continue to take great issue (as we did before the Board most recently in May of 2007) with the unfair and inaccurate characterization. The fact remains it is the Union who continues to misrepresent the Employers' position with respect to their "local economic business

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model" and relies on that misrepresentation in suggesting that the Employers are being inaccurate.

### The Announcement

The Employers acknowledge that they have recently announced that they are developing state of the art broadcast centres at their stations in Vancouver, Edmonton, Calgary and Toronto to support the production needs of their local television stations across Canada (the "Announcement"). The Announcement is contained in a variety of forms in the Union's Application. It speaks for itself. However, some context to the Announcement may be helpful. As set out in the documents attached to the Union's Application, the state of the art broadcast centres are required to enable the Employers to "become HD ready". As this Board is aware, the CRTC has mandated that all television signals must be in High Definition ("HD") by the year 2011. The economics of such required state of the art equipment would be obviously cost prohibitive for any stand alone station. In addition to the CRTC's requirement to move to HD, consumers are demanding this enhanced technology. Implementation of this technology is critical in order to remain competitive in the industry. It is troubling that the Union appears to be attempting to prevent the Employers from making the necessary changes to adapt, which changes have been mandated by another Federal agency.

As the Board will be aware, business operations do not cease, nor are technological advances or business developments frozen merely because an application is made to the Board in respect of the matters that are currently outstanding. As the Union has pointed out, its application herein was filed on or about April 28, 2001. As the Board will recall, during our last appearance before it in May of 2007, the Employers reiterated a number of times that they would continue to aggressively pursue new technology and if that new technology made sense both from a financial and operational stand point, a change would be made. As the Board will recall from our written submissions and most recently during our last appearance before it, this is precisely what occurred with respect to Master Control and Traffic and is exactly what has occurred with this most recent Announcement.

However, in no way does the most recent announcement "belie" anything that has been said to the Board. In fact, it is entirely consistent with what the Employers have always maintained.

Again, with all due respect to the Union, it either fundamentally misunderstands or misrepresents the nature of the Announcement and its relevance to

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the matters before the Board and in particular, to the Employers' "local economic business model". In the circumstances, we feel compelled to briefly summarize our position once again.

**"Local Economic Business Model"**

The Board will no doubt recall that the Employers outlined in great detail both in its written materials and in argument in May of 2007 how the existing bargaining unit structure is a function of unique local conditions and years of collective bargaining and particular operational needs and requirements. As a result, very different local stations with very different bargaining unit certificates and collective agreements have developed to create this "local economic business model".

The Board will recall that the Employers reviewed the different certificates and collective agreements and established how difficult, if not impossible, a task it would be to attempt to amalgamate those very different certificates and agreements without serious and immediate labour relations disruption, disharmony and industrial instability.

It is this "local economic business model" that must be preserved to avoid that disruption, disharmony and instability.

The Announcement in no way alters that "local" model. In fact, the Announcement makes it clear that:

- (a) Local news will continue to be assigned, gathered, edited and anchored at the local level; and
- (b) The local stations will continue to have sole authority in decision making over the content of news at any particular local station.

**Master Control**

As noted above, the Union continues to mischaracterize and misrepresent the Employers' evidence and position with respect to many things, and in particular, related to the centralization of Master Control. Although we have addressed this point in writing a number of times, as the Union continues to misrepresent the facts, we feel compelled once again to address it.

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As noted above, the Union's original application was initially filed in April of 2001. Since that time, the Board is aware that the broadcasting industry has changed dramatically, particularly in the area of technological advances. One of the areas that has seen dramatic technological advances is Master Control. Despite the Union's misrepresentations to the contrary, the Employers never took the position that a single Master Control would never be implemented, but that at the time the economic viability of any further consolidation of Master Control had not been proved or determined. Since that time, there have been further developments which made such a consolidation both economically and technically feasible. As a result, the consolidations of Master Control did occur. This is not inconsistent with the Employers' evidence or its position. As noted above, the Employers have always and continue to reiterate that they will aggressively pursue new technology, and if that new technology makes sense from both a financial and operational stand point, a change will be made. Furthermore, the reason such an approach is taken is to ensure the viability of the local stations where the Union's members live and work.

Again, although the Announcement has nothing to do with Master Control, as the Union continues to take liberties with the facts in that regard, the Employers feel compelled to correct the record once again.

Lastly, as the Board will recall from the Employers' previous submissions and argument, the Employers do not make decisions based on the timing of any application before the Board. As was the case with Master Control, traffic and programming, the decisions outlined in the Announcement (and the timing of these decisions) were made because it was the best business decision at the time and not because of any Union application before the Board.

#### The Thrust of the Union's Position

The thrust of the Union's argument in support of its Application is that without the interim orders being granted, the Union will have no opportunity to meaningfully negotiate with the Employers in connection with the Announcement. The Board will note that this "ability to negotiate" is the foundation of each of the Union's enumerated requests. In seeking the "ability to negotiate", the Union once again purports to be concerned with the inability of its members to "follow the work".

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### Ability to Follow the Work

In this regard, the Board will recall that the Union has never proposed "follow the work" language in any of the existing collective agreements. In fact, the Board will recall that since the original Application was filed in 2001, the Union has agreed to the introduction of collective agreement language that allows the Employers to transfer work functions out of local stations to other CanWest facilities.

We continue to suspect that this is so because of the Union's stated intention to maintain the concept of local seniority.

The Board will also recall that notwithstanding the fact that the Employers have offered to negotiate "follow the work" language under the existing bargaining unit configuration with the Union, that offer has been ignored, derided and rejected by the Union. That offer was made one year ago.

Before addressing the purported impact of the Announcement on Union members and whether a single bargaining unit is necessary or appropriate in the circumstances, some comment must be made as to the number of members the Union claim are to be affected. The Union suggests that 250 employees will be affected by the Announcement. This suggestion appears to be nothing more than speculation as nowhere in the material provided is there any foundation for such a claim. The fact is that the Employers do not know and cannot specifically indicate how many staff reductions will be made. At this point, all that can be said is, as outlined in the Announcement, that once the new system is fully implemented in the spring of 2009 (a year and a half from now), "overall staffing levels will be reduced by approximately 200 positions across the country". It is also noted that at the same time, the Employers will be "creating a number of new production positions in Vancouver, Edmonton, Calgary and Toronto". It is estimated that there will be an additional 50 jobs created. Although the Union uses the figure "250" on a number of occasions, the Union does go on to recognize that many of those "250" are not members of the CEP. The Union claims that 130 of its members will be impacted by the Announcement, but until the plan in the Announcement is implemented, the Employers (or anyone else for that matter) cannot confirm such a number. The reality is, given the lengthy implementation period, many positions may be eliminated through attrition and many CEP employees may well end up in the newly created positions.

Furthermore, it should be noted that as has been the case with all of the previous decisions to centralize work functions (Master Control, Traffic, Programming),

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the Union continues to misrepresent the impact a "single bargaining unit" would have on its ability to meaningfully "negotiate" on behalf of its members in connection with these centralization efforts.

As the Employers have previously articulated both in its written briefs and before the Board in argument in May of 2007, the previous centralization efforts ought not lead the Board to the conclusion that a single bargaining unit is appropriate. For the same reasons, the Announcement ought not lead the Board to that conclusion or to the conclusion that the Union's Application for interim relief is either necessary or appropriate.

Once again, as was the case with the previous centralization efforts of Master Control, Traffic and Programming, the Announcement involves both a cessation of work functions and change in work functions as a result of technology.

#### Cessation of Work

The cessation of a work function involves a situation where work has left a local station because that work function no longer exists. That has usually arisen as a result of technological advances and it is again the case with the Announcement. However, you will have noticed that in addition to technological advances, further staff reductions in Quebec and the Maritimes were made to deal with local economic challenges in those markets. As a result, for both of these reasons, many of the staff reductions are in situations where work is no longer required to be performed at the local station and in fact will no longer exist. As a result of the technology being implemented, there will be a cessation of work and not a transfer of work. Put another way, the decisions outlined in the Announcement will result primarily in layoffs as the technology being implemented will result in a cessation of work and not a transfer of work. As set out in the Announcement, it is anticipated that staffing levels will be reduced.

As a result, in this situation there is no work to "follow". Accordingly, a single bargaining unit would do nothing to protect the Union and its members from such an event. Furthermore, and for the same reasons, the interim relief being sought is neither necessary nor appropriate.

#### Change in Work Function

The second category of impact in the Announcement is, as a result of technology, some work functions are being changed in nature and scope. The

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Announcement is clear that it is expected that "approximately 50 new staff roles will be created in total in Vancouver, Edmonton, Calgary and Toronto to enable these broadcast centres to manage the additional workload". It is these "new staff roles" which will accommodate the technology related changing work function.

Presumably it is in connection with these new staff roles in the broadcast centres which the Union seeks to negotiate on behalf of its members (as there is nothing further to "negotiate" on the majority of impacted positions which are true layoffs as the jobs will no longer exist). The Union has been clear that its "stated purpose" behind its original application was to allow it the opportunity to negotiate the ability for its members to "follow the work". At the outset, we remind the Board and know that the Board is well aware from the documents, evidence and submissions it has already heard, that the Union has always been clear that even if it was to obtain a single employer declaration in some form, the Union intended to maintain the concept of local seniority in each of the existing bargaining units. The original panel at paragraph 195 of its original decision accepted that position as follows:

"Global's submissions accurately pointed out that the earlier CEP representations to the Board at the outset of the hearing indicated CEP's intention to maintain some concept of local seniority should the Board consolidate the existing bargaining units into a larger bargaining unit. Given the stated intention, the requests for interim orders were accordingly rejected by the Board."

Accordingly, although a Single Employer Declaration has been issued and although the Union seeks a single bargaining unit as a result, there would be no impact whatsoever on current bargaining unit employees even if there was to be some transfer of work functions. That is, if the "new staff roles" could be considered "transfers" of work functions following the issuance of a single bargaining unit (or in this case an issuance of the interim relief being sought) such a transfer of work would have no different impact on current bargaining unit employees as it is the Union's stated intention to negotiate provisions which have the effect of maintaining the concept of local seniority (we assume the stated intention was relied upon by many employees in their decision to support the Union's application in the first place). As a result, the suggestion that somehow the Union's members are being prejudiced by transfers of work, including the latest Announcement, prior to the decision of the Board on the reconfiguration of bargaining units is misguided and simply untrue. However, the reality is that the Employers cannot say and, at this time, no one knows what these "new staff roles" will encompass given the

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new technology. As a result, the reality is the "new work" may not be capable of "following" in any event.

Put another way, the Announcement contemplates new technology being introduced which will allow the Employers to make the required conversion to HD. As a result of that new technology, some of the work function being performed at the local level will cease. It will no longer exist. Furthermore, it is anticipated that "new staff roles" will be created in Vancouver, Calgary, Edmonton and Toronto to "accommodate the technological requirements of the new system" (see the documents attached to the Union's Application). At this point, it is not clear how much of the work will be transferred, but it is clear that most of it will be eliminated. As a result, there may not be much, if any, work to follow.

Lastly, just as was the case with the previous centralization decisions, all collective agreements contain similar provisions that deal with the situation before the Board: technological change and layoffs. These articles governed the previous centralizations and will be used to deal with the Announcement. Accordingly, even if there was a "single bargaining unit", it is reasonable to presume that such a unit would continue to contain technological change and layoff provisions consistent with those in place across the country and therefore, such a "single bargaining unit" would provide no greater benefit to the Union or its members.

Accordingly, the interim relief being sought is not necessary or appropriate. Just as the Original Panel rejected the Union's previous requests for interim orders (in connection with the Employers' announcements to centralize Master Control, Traffic and Programming), so should the latest Application be rejected. In fact, in this case there is even less cause to intervene as it is unclear if there will even be any traditional "transfers of work" and therefore no work to "follow".

Having said all of that, although it cannot be said how much, if any, work might be transferred (given the uncertainty as to the "new staff roles"), if the Union's concern is that its members are unable to "follow the work" should work be transferred from one location to another (including in this Announcement), the Employers have reiterated that they are more than willing to sit down with the Union and negotiate the circumstances and conditions under which members might be entitled to "follow the work" with their seniority intact. The fact is, as noted above, the Union has never requested such a right. In fact, as noted above, it is the Union's own position which seems to preclude such a negotiation. However, if the Union truly is concerned, such an accommodation can be negotiated into the existing bargaining unit structure.

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Furthermore, the Employers are encouraging all qualified employees in impacted positions to apply for any vacancies that might arise during the implementation period.

In all of the circumstances, the Employers maintain that the existing bargaining unit configuration remains appropriate and can accommodate what appears to be the Union's main concern that its members cannot "follow the work". Put another way, a single unit (or the requested interim relief) is not required to allow the Union's members to "follow the work". That can be accommodated through negotiation should there be any "work" to follow and should the Union request it through the existing bargaining unit configuration.

Moreover, given the industrial instability (outlined in our previous submissions and in argument before the Board in May of 2007) and the threat to the economic viability of the Employers as a whole that will most certainly arise should a single bargaining unit or the interim relief be granted, the Employers urge the Board to disregard any request for a single unit and for its interim relief, particularly in a situation where the main "purpose" to the request by the Union can be accommodated through the existing bargaining unit structure. As the Employers have repeatedly pointed out to the Board, the greater the change in the existing structure, the greater the risk in conflict and the greater the impact of that conflict on employees.

**Interim Relief Not Necessary in Order to Give Full Effect to the Pending Decision From the Board**

For the reasons outlined above, the interim relief is not necessary in order to give full effect to the pending decision from the Board. Furthermore, we reiterate that the Union continues to misunderstand that although the Employers are taking steps to regain their place of prominence within the conventional broadcasting industry, to do so they must maintain their local economic business model.

It is this local economic business model which has always existed and will continue to exist regardless of any technological changes that might occur in the future. The economics of local stations must reflect the realities of the marketplace, both in terms of market size and competitors. Costs, working conditions and flexibility in workplace rules must reflect those realities.

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**A single bargaining unit runs contrary to that model and will, by necessity, lead to nothing but industrial instability. As we have previously articulated to the Board, should the Board determine that a single bargaining unit is appropriate and the Union attempts to negotiate terms and conditions of employment consistent with such a single bargaining unit, the Employers will have no choice but to object to and resist such efforts in order to protect their local economic model which is necessary for their economic viability. In all of the circumstances, given that the Employers' local economic business model is a fundamental condition to remain competitive in the Canadian conventional broadcasting industry, any move away from that model in the form of a single bargaining unit can only lead to industrial instability and labour relations disharmony.**

**Interim Relief Sought Will Not Further the Objectives of the Code and is Not Required to Protect the Integrity of the Section 18.1 Process**

For the reasons outlined above, the interim relief sought will not further the objectives of the Code and is not required to protect the integrity of the Section 18.1 process. Although it is not clear at this point if the impacted positions are ones where there might be work to "follow", what is clear is that most of the impacted positions are ones which will be simply eliminated. In the circumstances, there may not be much, if any, work to "follow". However, if it is actually interested in doing so, the Union can meaningfully negotiate terms and conditions relating to the latest Announcement should there be any work to "follow" if it was to accept the offer made by the Employers some time ago. Although the Union baldly states that an order is necessary as negotiations would not be "truly meaningful unless there is an appropriate legal requirement to do so", how can such a statement be made when it outright refuses to negotiate in the first place?

**The Balance of Convenience Does Not Favour the Granting of the Relief Sought**

For the reasons outlined above, the balance of convenience does not favour the granting of the relief sought. Again:

- (a) there may well be no work to "follow";
- (b) even if there was, there is no "lost opportunity" to bargain. The Union has to date simply refused to do so;
- (c) a single bargaining unit, in all of the circumstances would not benefit the Union or its members any more than the current bargaining unit structure as

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"true layoffs" would be treated no differently and even if there were "transfers of work functions" (which cannot be said with any certainty at this point), those can be dealt with under the existing structure and the Employers are willing to do so.

Furthermore, the Board is currently considering all of the evidence and will no doubt be issuing a decision. The Announcement is not time sensitive in that no CEP employee has been given a layoff notice and the first phase of the Announcement will not begin until the spring of 2008.

However, any decision which affects or delays the planning behind the Announcement can only lead to further economic harm to the Employers, which at the end of the day will negatively affect both the Employers and its employees.

**Application to Adduce Further Evidence Not Necessary or Appropriate**

For all of the reasons stated above, the application to adduce further evidence is also not necessary or appropriate. The Board has ample evidence to deal with the issues before it and as noted above, this Announcement is substantially the same in nature and character as the evidence before the Board relating to the centralization of Master Control, Traffic, and Programming (although, given the lack of certainty and clarity as to whether there will be any true "transfers" of work, the impact may well be less than in those situations). It is at best "similar fact evidence" and not "new" evidence. Consequently, they are not facts that would likely cause the Board to reach any different conclusion that it would having regard to the evidence properly before it and therefore not the kind of "new" evidence the Board is usually inclined to accept once a hearing has concluded.

In all of the circumstances, the stated concern for both the request for a single unit and this most recent application for interim relief can be addressed in the existing bargaining unit configuration without the need to fundamentally alter the bargaining unit structure or issue any of the interim orders as requested. Furthermore, the Union's application to adduce further evidence is neither necessary nor appropriate. For all the reasons outlined above, we respectfully submit that the Union's Application herein be dismissed.

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Despite the fact the Employers disagree with the Union on the merits of the Application, the Employers do agree with the Union that no hearing is required in the circumstances and do not request one.

Yours truly,

**THOMPSON DORFMAN SWEATMAN LLP**

Per:

**ORIGINAL SIGNED BY  
Keith D. LaBossiere  
Keith D. LaBossiere**

**KDL/nb  
#721899-v2**

**cc: Rogers Law Office  
Att: Dan Rogers**