



**CFTPA**

Representing television, film  
and interactive production in Canada

**ACPFT**

Porte-parole de l'industrie de la production télévisuelle,  
cinématographique et interactive au Canada

[www.cftpa.ca](http://www.cftpa.ca)

August 13, 2010

**Via CRTC comments/interventions form**

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

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2010-468 – Application by CTVglobemedia Inc., on behalf of its wholly owned subsidiary CTV Television Inc., to amend the broadcasting licences of its television programming undertakings known as CTV and ASN (Application No. 2010-0880-6)

1. The Canadian Film and Television Production Association (the “CFTPA” or the “Association”), which will soon officially change its name to the Canadian Media Production Association (CMPA), welcomes the opportunity to provide these **opposing comments** with respect to the above-referenced Notice of Consultation.
2. The CFTPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. Our almost 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

### The Application

3. CTVglobemedia Inc. (“CTVgm” or the “Applicant”) has filed an application (the “Application”) seeking regulatory flexibility related to the policy outlined in *Broadcasting Regulatory Policy CRTC 2010-167* (“BRP 2010-167”), dated March 22, 2010, which set out a group-based approach to the licensing of private television services. Specifically, CTVgm is requesting an exception to section 4(6) of the *Television Broadcasting Regulations, 1987* for its CTV and Atlantic Satellite Network (“ASN”) stations. Section 4(6) requires that 60% of all programming broadcast on the undertaking on a yearly basis be Canadian. The Applicant proposes to replace this requirement with a condition of licence stipulating that the undertakings shall devote not less than 55% of the broadcast year to the broadcast of Canadian programs.
4. CTVgm states that the purpose of its Application “is to accelerate the implementation of one of the policies” announced in BRP 2010-167.

5. The Applicant argues that the economics of over-the-air (OTA) television is such that foreign programming generally is profitable, while Canadian programming is not. Further, it asserts that a reduction from 60% Canadian content overall to 55% would give the CTV and ASN stations the scheduling flexibility “to replace a non-performing domestic program with a profitable one.”
6. CTVgm also argues that approval of the Application “is unlikely to result in a reduction in the amount of Canadian programming being produced, as the shows that will be replaced by foreign content are generally series that have already had multiple runs on over-the-air television.”

### The CFTPA’s Comments

7. The CFTPA strongly opposes CTVgm’s Application for the reasons set out below.

#### **CTVgm’s application is inconsistent with BRP 2010-167**

8. CTVgm argues that its Application is “entirely consistent” with the “policies” outlined in BRP 2010-167. The CFTPA respectfully submits that BRP 2010-167 represents a single policy framework that must be taken as a whole, not a series of individual policies from which licensees can cherry-pick, as CTVgm is proposing. As such, the Application could only be considered consistent with BRP 2010-167 if CTVgm proposed to adopt all of the measures outlined in that policy framework, which it has not done.

9. In BRP 2010-167, the Commission noted the following:

As conventional television profitability is challenged by a downturn in advertising revenues and the fragmentation of those revenues, specialty services have demonstrated continued financial strength on the basis of their dual advertising/subscription revenue streams. This has contributed to the overall profitability of the large groups and their ongoing ability to contribute to the creation of high-quality Canadian programming.<sup>1</sup>

...

Through group-based licence renewals, the Commission's objective is to provide private broadcasting groups with greater flexibility in the allocation of resources amongst their various television platforms. These groups require the flexibility to respond quickly to changes in viewer behaviour. Such an approach will allow the Commission to consider factors including, but not limited to, the total audience reached by a broadcasting group, the totality of its revenues and the totality of its programming commitments and obligations.<sup>2</sup>

10. In essence, the Commission’s group-based licensing policy framework is a recognition that large corporate groups’ regulatory obligations need to be assessed in the context of their entire regulated assets, and not in silos.
11. The group-based licensing policy framework represents a balancing of regulatory obligations and flexibility. As such, they must be implemented as a whole.
12. In fact, the CFTPA supported the Commission’s move to reduce overall Canadian content exhibition requirements applicable to private conventional television broadcasters to 55%, in combination with the reintroduction of Canadian programming expenditure requirements on such broadcasters, under BRP 2010-167. It would be completely inappropriate for the

<sup>1</sup> *Broadcasting Regulatory Policy CRTC 2010-167 – A group-based approach to the licensing of private television services*, March 22, 2010, paragraph 24.

<sup>2</sup> *Ibid.*, paragraph 26.

Commission to allow CTVgm to receive some of the flexibility provided in the group-based licensing policy framework in advance of having to fulfill the new obligations pursuant to the framework.

13. In our view, approving CTVgm's Application would set a dangerous precedent that would be very difficult for the Commission to contain going forward. It would open the door for licensees to seek to cherry-pick elements of policy frameworks they like and ask for exemptions and exceptions to elements they do not like. While this would certainly serve corporate interests, it would not be in the best interests of the Canadian broadcasting system as a whole or the public interest.
14. Our concerns about setting a precedent are not misplaced, as evidenced by similar applications for "regulatory flexibility" recently filed by CTV Limited for its "A" stations and Rogers Broadcasting Limited for its OMNI and Citytv stations, as per *Broadcasting Notice of Consultation CRTC 2010-413* ("BNC 2010-413") and *Broadcasting Notice of Consultation CRTC 2010-477*, respectively.
15. Moreover, we note that in a news release issued on July 12, 2010 urging the Commission to reject CTVgm's Application, Quebecor Media Inc. stated that if the CRTC approved the Application, similar flexibility should be extended to other Canadian conventional TV stations. Canwest Television Limited Partnership ("Canwest") made the same comment in its intervention filed pursuant to BNC 2010-413, as follows:
 

Given that the seminal policy determinations contained in BRP CRTC 2010-167 were released just four (4) months ago, we submit that such relief, if granted, should be afforded to all broadcasters that fall under that new regime. These policy determinations were intended for universal application at the same time.<sup>3</sup>
16. CTVgm's arguments completely disregard the entire premise of the Commission's group-based licensing policy framework, and expose a significant double standard on the company's part. While on the one hand CTVgm has no problem accelerating implementation of a significant regulatory flexibility granted in BRP 2010-167 (i.e., a reduction in overall Canadian content for its conventional TV stations), it is apparently unwilling to fulfill the new regulatory obligations pursuant to the policy framework at the same time.
17. Even if the Commission were to consider allowing CTVgm to accelerate implementation of the group-based licensing policy framework in its entirety beginning September 1, 2010, this would be problematic for a number of reasons.
18. First, the Commission has yet to make a determination pursuant to *Broadcasting Notice of Consultation CRTC 2010-470* on its proposed definition of Category 2(b) (long-form documentary), which is included in its definition of programs of national interest, a key component of the group-based licensing policy framework.
19. Second, the Commission has yet to collect and publicly release data on broadcasters' historical spending on Category 2(b) in order to finalize the required group Canadian programming expenditure level for programs of national interest.
20. Accordingly, the CFTPA respectfully submits that the only appropriate response is to deny CTVgm's Application.

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<sup>3</sup> Canwest Television Limited Partnership intervention to *Broadcasting Notice of Consultation CRTC 2010-413*, August 3, 2010, paragraph 6.

**CTVgm has failed to make a case as to why specific relief is necessary at this time**

21. The CFTPA submits that CTVgm has failed to make a case as to why the Commission should accelerate one element of the group-based licensing policy framework for the CTV and ASN stations, in the form of a reduction in Canadian content obligations, in advance of the entire policy framework coming into force. CTVgm offers no substantive rationale why an exception should be made and the reduction in Canadian content should be accelerated. Revisiting original timelines for implementation of the policy framework is irrelevant, as is CTVgm's suggestion that it is "unlikely" that there would be a reduction in Canadian production, based on the resulting decrease in repeat programming.
22. While CTVgm claims that foreign programming generally is profitable, while Canadian programming is not, and that its request will "replace a non-performing domestic program with a profitable one," it has failed to provide any empirical evidence on the public file to justify these claims. The CFTPA notes that section 3(2)(a) of the Rules of Procedure requires applications such as CTVgm's to "contain a clear and concise statement of the relevant facts, the grounds of the application and the nature of the order applied for or decision requested." We submit that the Applicant has offered no facts on the public file to support its specific claims and the overall Application other than the existence of a CRTC policy framework intended to be implemented in 2011, and even then it has chosen to cherry-pick elements of that policy framework.
23. Furthermore, as we have stated in the past, it is our view that any lack of success, audience or financial, that conventional TV broadcasters have achieved for Canadian programming is due in large part to their lacklustre financing, scheduling, and promotion of such programming. We firmly believe that if broadcasters made Canadian programming their number one priority, with adequate licence fees and production budgets, premium scheduling on days and times of the year when Canadians are most watching television, and market them sufficiently and effectively, Canadian programs can and do provide them with a return on investment.
24. CTVgm also fails to acknowledge that the CTV and ASN stations are part of the large and profitable CTVgm corporate group. Regulating groups as a whole is the very foundation of the Commission's group-based licensing policy framework approach. The table below shows that CTVgm was a highly profitable corporate group in 2009 (the last year in which data is publicly available), even during a difficult economic climate and with the exclusion of its profitable mainstream news and sports services, which have been removed since they are not part of the group-based licensing policy framework (French-language services have also been removed).

**CTVgm Services 2009 PBIT**  
**(Excluding Mainstream News and Sports Services and French-language Services)**

<b>CTVgm Services</b>	<b>2009 PBIT</b>
CTV and A stations (combined)	(\$38,694,113)
<b>Subtotal Conventional TV</b>	<b>(\$38,694,113)</b>
The Discovery Channel	\$25,376,231
Space	\$21,269,405
Bravo	\$18,147,506
The Comedy Network	\$12,388,459
BNN – Business News Network	\$12,199,726
Discovery World HD (formerly Discovery HD)	\$8,564,086
MuchMusic	\$7,030,316
MuchMore	\$6,668,719
Star! TV	\$6,351,663
Investigation Discovery (formerly CourtTV Canada)	\$2,757,697
Book Television	\$1,945,288
travel + escape	\$1,593,580
Comedy Gold (formerly TV Land)	\$1,290,250
Animal Planet	\$1,029,662
MuchMoreRetro	\$615,609
Discovery Science (formerly Discovery Civilization Channel)	\$571,134
MuchVibe	\$531,151
ESPN Classic Canada	\$462,081
PunchMuch	\$431,429
MTV2 (formerly Razer)	\$340,311
MuchLoud	\$190,140
CP24	(\$565,937)
Fashion Television	(\$1,421,003)
MTV Canada	(\$5,365,490)
<b>Subtotal Specialty TV</b>	<b>\$122,402,013</b>
<b>Total Group PBIT</b>	<b>\$83,707,900</b>

25. While we acknowledge that CTVgm has not directly argued financial need as a rationale for its Application, the Commission should be mindful of the improving global and Canadian advertising markets and the better overall economic environment in international and Canadian broadcasting when assessing CTVgm's request.
26. Globally, for example, Informa Telecoms & Media predicts net TV advertising to grow by 3.7% in 2010 from the previous year.<sup>4</sup> In the U.S., CBS's local television stations saw revenues increase 31% to \$337.9 million in CBS Corporation's fiscal 2010 second quarter ended June 30, 2010 from the same period last year "due to the improved advertising marketplace across many key categories."<sup>5</sup>
27. The economic environment appears to be equally buoyant for Canadian broadcasters. According to one news report, Canadian conventional TV networks were asking media buyers for upwards of 10% increases in ad pricing in the recent "upfront" sales process. When asked

<sup>4</sup> Global TV Advertising Forecasts – Extract, Informa Telecoms & Media, [www.informatm.com/gntv](http://www.informatm.com/gntv).

<sup>5</sup> CBS Corporation news release, "CBS Corporation Reports Second Quarter 2010 Results," August 3, 2010.

to comment on this year's negotiating environment, CTV's Executive Vice-President of Sales and Marketing offered the following comment: "The upfront market for conventional TV is buoyant, and specialty has been strong as well, with inventory moving earlier and faster than last year."<sup>6</sup>

28. Moreover, Group M, a division of WPP, predicts that TV's share of the Canadian advertising market will grow to 27.8% in 2010 from 27.1% in 2009.
29. Indeed, all evidence suggests 2010 is shaping up to be a good rebound year for Canadian broadcasters. For example, the Commission should consider the following:
- CTVgm shareholder Torstar Corporation recently highlighted improved financial results reflecting higher revenues and EDITDA for CTVgm in reporting its fiscal second quarter financial results ended June 30, 2010.<sup>7</sup>
  - CTVgm's principal competitor, Canwest, reported increased revenue and operating profit for its television operations for its fiscal third quarter ended May 31, 2010. Excluding results from the company's discontinued E! network from the previous year, revenue was up 14% and operating profit increased 39% to \$101 million in this year's quarter compared to same the period last year.<sup>8</sup>
  - In reporting its fiscal second quarter financial results ended June 30, 2010, Rogers Communications Inc. noted that its Media division saw an increase in revenue, reflecting improvements in prime-time TV ratings, increased subscriber fees, a better advertising market, and in consumer discretionary spending.<sup>9</sup>
  - Corus Entertainment Inc.'s Television segment saw revenue increase by 13% in the company's fiscal third quarter ended May 31, 2010, reflecting a 13% increase in subscriber revenues and "a return to strong growth in advertising revenues with an increase of 11%." Segment profit increased by 17% in Q3 and 11% year-to-date.<sup>10</sup>
  - Astral Media's Television division saw advertising revenue increase by 17% in the company's fiscal third quarter ended May 31, 2010 compared to the same quarter the previous year.<sup>11</sup>
30. Given the increasing evidence that the advertising market is rebounding and the overall economic situation is improving in the broadcasting industry, the CFTPA submits that the CRTC should take into account the improvements in both the financial situation of CTVgm as a whole this year and the advertising market in assessing the merits of the Application.

## Conclusion

31. In summary, the CFTPA opposes CTVgm's Application for regulatory flexibility in advance of implementation of the entire group-based policy framework. In our respectful submission, it would be completely inappropriate for the Commission to allow CTVgm to receive some of the flexibility provided in the group-based licensing policy framework prior to having to fulfill the new obligations pursuant to the framework. Furthermore, CTVgm offers no substantive arguments in its Application to justify the Commission granting it a precedent-setting exception

<sup>6</sup> Bailey, Katie. "2010 upfronts 'fast and furious,' buyers say," Media in Canada. June 28, 2010.

<sup>7</sup> Torstar Corporation Interim Management's Discussion and Analysis for the three and six months ended June 30, 2010 and 2009, July 27, 2010.

<sup>8</sup> Canwest news release, "Canwest Global Communications Corp. Reports Third Quarter 2010 Results", July 15, 2010.

<sup>9</sup> Rogers news release, "Rogers Reports Second Quarter 2010 Financial and Operating Results", July 27, 2010.

<sup>10</sup> Corus Entertainment Third Quarter 2010 Report to Shareholders For the Three and Nine Months Ended May 31, 2010 (Unaudited), July 14, 2010.

<sup>11</sup> Astral Media Third-Quarter Report to Shareholders, July 15, 2010.

to the group-based policy framework. For all of the reasons stated in this intervention, CTVgm should not be allowed to cherry-pick what it likes about the policy framework and accelerate its implementation.

32. Moreover, the regulatory relief requested by CTVgm seems incredibly one-sided in favour of its own business interests and appears blind to the significant negative impact that such relief, if granted, would have on other important stakeholders in the Canadian broadcasting system, namely Canadian television viewers, the independent production sector, and the creative community.
33. The CFTPA appreciates the opportunity to comment on the Application. A copy of this intervention has been sent to the Applicant.

All of which is respectfully submitted.

Yours truly,

*[Original signed by Norm Bolen]*

Norm Bolen  
President and CEO

c.c.: David Spodek, CTV (via email: [david.spodek@ctv.ca](mailto:david.spodek@ctv.ca))

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