13 January 2014

John Traversy
Secretary General
CRTC
Ottawa, ON   K1A 0N2

Dear Mr. Secretary General

Re: Call for comments on the Commission's approach to tangible benefits and determining the value of the transaction, Broadcasting Notice of Consultation CRTC 2013-558 (Ottawa, 21 October 2013)

1. On behalf of Unifor, the new national union established on August 31, 2013, I am pleased to submit the attached comments with respect to Broadcasting Notice of Consultation 2013-558.

2. Created through the merger of the Communications, Energy and Paperworkers Union of Canada and the Canadian Auto Workers union, Unifor has more than 300,000 members across Canada, working in 20 economic sectors.

3. Unifor looks forward to the CRTC's determination in this matter.

Sincerely,

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Unifor Submission to the CRTC on Broadcasting Notice of Consultation 2013-558

Call for comments on the Commission's approach to tangible benefits and determining the value of the transaction

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Submission by Unifor
January 13, 2014

Introduction

1. Unifor is Canada's largest union in the private sector, representing more than 300,000 workers across a diverse range of economic sectors. Unifor was formed through the merger of the Communications, Energy and Paperworkers Union of Canada (CEP) and the Canadian Auto Workers union (CAW-Canada). Unifor's founding convention was held during the 2013 Labour Day weekend in Toronto.

2. Unifor represents thousands of Canadians employed in the media sector, comprised of the print newspaper, graphical and broadcasting industries. Unifor members create and distribute Canadian programming content in communities and across the country. Our members work for radio and television stations serving local communities as well as national discretionary pay and specialty services, and distribution services that include cable, satellite and wireless telephony.

3. Unifor has long advocated for a strong and growing broadcast sector in Canada, one that recognizes and promotes the importance of Canadian content, especially localized content that serves the interests of communities. Our view is that Canadian broadcast content not only enhances our culture and democracy, it also has the capacity to sustain and create good jobs. Broadcast jobs provide direct and indirect economic benefit to communities. And the work our members do each day helps weave Canada's social tapestry. A strong Canadian media sector also helps retain (and attract) our most promising creative talent here at home.

4. Unifor is pleased to submit the following comments concerning the proposed re-allocation of tangible benefits for transfers of television assets and the proposed change in method by which transaction value is determined, as described in Broadcasting Notice of Consultation 2013-558.

On the Matter of Tangible Benefits

5. The Commission's proposal is to restructure of the allocation of monies generated in tangible benefits triggered when there is a transfer of control regarding television assets in Canada (tangible benefits also apply to radio assets, but the Commission is not proposing a change to how those funds are allocated).

6. The stated intent of the Commission's tangible benefits policy is that it yield "significant benefits… offered to the community in question…" (Public Notice (PN) CRTC 1999-97) and that it "yields measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system as a whole" (Broadcasting Notice of Consultation CRTC 2013-558).

7. By the Commission's own admission, the past implementation of tangible benefits "may not have been as successful as possible." In CRTC 2013-558 the Commission expresses concern over a deviation from the policy's desired outcomes (paragraph 9), the need to focus its analysis of tangible benefit proposals on the "overall public interest" rather than a list of initiatives offered by the party acquiring the assets (paragraph 10) and the difficulty in monitoring, reviewing and reporting of these initiatives (paragraph 11).

8. Current practice requires that applicants for transfers of ownership or control involving television programming undertakings make "clear and unequivocal commitments to provide tangible benefits." The Commission requires that 10% of the value of the transaction be allocated to tangible benefits, with 85% of those allocated to on-screen programming and 15% allocated to "social benefits." For the transaction of radio assets, at least 6% of the value must be allocated to tangible benefits. The Commission also stipulates that tangible benefits should be "incremental" and not part "of the normal cost of business" (i.e. not 'self-serving).

9. The Commission is now proposing that no less than 80% of tangible benefits be re-allocated to established third-party funds, including the Canada Media Fund (CMF) and various certified independent production funds (CIPFs), with no more than 20% of tangible benefits left to the discretion of the purchaser. The Commission also attempts to clearly define what constitutes an acceptable "self-serving" initiative that would not qualify as a tangible benefit.

Unifor's Position on Tangible Benefits

10. Unifor supports the general intent of tangible benefits, for both television and radio. We are also encouraged by the Commission's willingness to undertake such a review, a request that one of our predecessor unions (the Communications, Energy and Paperworkers Union of Canada) had called for previously.[1]

11. Ensuring broadcasters commit to invest in the Canadian television and radio industry is an important part of supporting the creation and distribution of Canadian programming. Tangible benefits have largely been used (albeit indirectly) to fund indigenous and independent Canadian film by way of bolstering accredited third-party production funds and other beneficent support channels – productions that are vital to enhancing Canada's creative class and compensating for the Canadian industry's lack of economies of scale relative to the U.S. Tangible benefits have also been used in past to strengthen

[1] See Comments of the Communications, Energy and Paperworkers Union of Canada to Broadcasting Notice of Consultation CRTC 2013-106 (6 March 2013).

local community programming, albeit to a far lesser degree.

12. The production of original, local news and non-news programming, in Unifor's view, serves the stated purpose of the tangible benefit policy, including the "public interest" criteria identified by the Commission (CRTC 2013-558 (paragraph 6)).

13. We acknowledge that part of the Commission's proposal aims to limit the discretion broadcasters may exercise when developing a tangible benefit package, in the course of a proposed transaction. In attempting to "clarify and codify" its expectations regarding discretionary initiatives, the Commission also ventures to define what it deems a "self-serving" initiative. In our view, it is not clear whether the proposed definition (outlined in paragraph 23 of CRTC 2013-558) will effectively restrict (or perhaps limit) tangible benefit funds to support original local news and non-news programming initiatives, as has been accepted in the past – however limited these initiatives have been.[2]

14. For instance, the Commission's approval of BCE's purchase and transfer of ownership of broadcasting licenses from CTVgm in 2011 (Broadcasting Decision CRTC 2011-163) included commitments for sustained local programming in A-Channel markets as well as enhancing local news coverage in various western markets within BCE's tangible benefit funding allocation proposal. Ostensibly, these funds were used for initiatives that could be deemed "self-serving" under the Commission's proposed definition (e.g. they are 'in-house' and they represent improvements to 'existing programming').

15. The Commission rationalized this BCE-CTVgm decision to accept local news in the tangible benefits package, suggesting these initiatives could be "deemed incremental if their continuation is in doubt because of ongoing financial difficulties."[3] However extraordinary this decision was, it ensured access to important local news programming which directly serves the public interest of the community.

16. This 2011 decision also recognized the challenges faced by conventional television stations, including local conventional stations, noting their overall "viability" was in question.[4] In this context, the Local Programming Improvement Fund in 2010 was created as a means to remedy the situation and increase access to local programming in non-metropolitan areas – although to what degree the Fund has achieved those ends is

[2] Ibid (paragraph 63), "Local news is very rarely supported by the tangible benefits policy, however, A review of 88 licensing decisions from 2000 to 2012 found only four in which local news initiatives were offered as a benefit. Benefits offered to local stations and local news amounted to 2.1% and 5.1% of all tangible benefits in this period."
[3] CRTC 2011-163 (45)
[4] CRTC 2011-163 (44)

unclear, and contingent on how "local programming" is defined.

17. Unifor has outlined the strong link between employment levels for private local programming and CRTC policy for local programming, in a recent submission to the Commission on a related matter.[5] The absence of strong local programming policy has had significant economic and employment consequences, including an estimated 1,854 FTE job losses in the past six years (a period of private television downsizing and staff reductions).[6] These job losses began to stabilize as a response to the introduction of the LPIF in 2010, a fund that is scheduled to phase out by August 31, 2014.

18. If tangible benefits have included initiatives aimed at enhancing and sustaining local news programming in past, it stands to reason they should be included in future. Given the importance of local news and non-news programming specifically, to achieve the stated objectives of the tangible benefits policy (and in light of the very small proportion of tangible benefits monies earmarked for local programming in past, as well as the impending phase-out of the LPIF), we believe it is reasonable for the Commission to dedicate a portion of tangible benefits to initiatives that *explicitly* enhance local news programming (that is original, but not necessarily incremental) and local non-news programming (that is original**,** incremental and produced locally).

19. Local programming (whether television or radio), acts as a bridge between citizens and community life. Local news programming, specifically, offers an important window into local affairs and essential to a vibrant local democracy, community and culture – a position reinforced by the Commission in CRTC 2013-734, albeit in reference to national news services.

20. Local programming also caters to a diverse range of specific and unique community and cultural tastes (similar to OMNI multi-cultural programming) unlike programs of national interest, making it more relevant in the day-to-day lives of viewers. One U.S. study found that minority-targeted local programming encouraged viewing among minorities and that local programming made targeted minority audiences better off[7].

Unifor's Recommendation

21. Unifor believes original local news and non-news programming helps achieve the stated goals of the Commission's tangible benefits policy, and that it greatly serves the public

[5] Unifor submission to CRTC re: Broadcasting Notice of Consultation CRTC 2013-529 "Averaging hours of local programming: Oh, what a tangled web…" 5 November 2013. (50-53)
[6] *Ibid*
[7] Waldfogel, Joel; Holmes, Thomas J.; and Noll, Roger G. "Who Benefits Whom in Local Television Markets?" Brookings-Wharton Papers on Urban Affairs, pp 257-305. Brookings Institute Press (2004)

interest. Therefore, ***we ask that the Commission require no less than 10% of the total value of the tangible benefit package for transfers of television assets be allocated to expanding or enhancing original (not necessarily incremental) local news programming and original non-news programming (that is incremental and locally produced) for communities impacted by the transaction.***

22. On the matter of monitoring compliance of local news programming, ***Unifor also asks that the Commission institute a transparent and reliable monitoring and reporting system (for local news air-time on radio and television) that can be reviewed at regular intervals by interested parties***. A monitoring and reporting system would assist the Commission in ensuring the portion of tangible benefits (as per our proposal) dedicated to expand or enhance local programming is allocated accordingly. This would also fill a much-needed information gap in Canadian media research and monitoring.

23. We recognize that adding local programming into the mix of initiatives that may be covered by tangible benefits creates a conflict with the Commission's expansive definition of what constitutes a "self-serving" initiative. In fact, Unifor agrees with the spirit of this guideline. Tangible benefit proposals should not circumvent the policy's stated objectives (as outlined above). However, with respect to the criteria that the Commission outlines in 2013-558 (23), we fear that denying initiatives deemed "in-house" and that do not "involve payments of any kind to an independent third party" or that improve "existing programming" will, in turn, restrict our proposal to include local programming in the tangible benefits framework. ***We ask that the Commission include a clear exemption for original local news and non-news programming from the criteria that guides the definition of "self-serving."***

24. In this regard, ***we also ask the Commission to undertake a process of clearly defining local news and non-news programming, ensuring that it distinguishes (among other things) between original and re-broadcast segments, to help achieve clear and unequivocal outcomes.*** Unifor acknowledges and agrees with the argument put forward by Michel Morin in his concurring opinion of CRTC 2012-285 with respect to the "deficiencies" in generic terms, such as "local programming," in the context of the LPIF.

25. To ensure that these tangible benefit monies, earmarked for local programming, are not used to simply replace existing funds, ***Unifor recommends that the Commission use previous year local programming budgets as a benchmark when approving (or reviewing) a proposed local programming initiative by the purchaser.*** This will help foster transparency in the budgeting of tangible benefit initiatives, provide a guide with which to ensure funds yield "measurable improvements" to communities and that the funds are being apportioned incrementally, as per the Commission's stated objective.

On the Matter of Asset Valuation

26. On the matter of asset valuation (with respect to calculating tangible benefits) the Commission is considering a change in methodology; breaking from the oft-used discount cash flow (DCF) method (that the Commission identifies as "complex, costly and time consuming") and moving to an allocation method that determines valuation by examining past/anticipated earnings (measuring EBITDA), based on assumptions of market conditions. The Commission also notes that the broadcast industry has raised concern on the DCF method's "administrative burden" and "consistency of application." It should be noted that the Commission has accepted alternative valuation methods when the preparation of a DCF valuation causes "undue financial hardship" on an applicant.

Unifor's Position on Changes to the Asset Valuation Methodology

27. Unifor's primary concern on the matter of asset valuation is that the method employed will result in an accurate assessment of the assets in question; or at least as accurate as possible. In our view, the DCF model provides a more precise accounting of asset valuation. It also provides additional transparency on key assumptions (e.g. market growth, revenue, changes in operating expenditures, tax reform) that form a valuation conclusion.

28. In 2008, the Commission argued that the DCF model applied "to most circumstances" (including those undertakings operating at a loss) as well as "the growth rate and risk specific to an undertaking," following a review of this exact same proposal.[8] In the Commission's own words, the DCF model "is the one that generally better assesses the value of assets."

29. It would be incumbent upon those advocating for a change to the valuation methodology to articulate the reasonableness of employing an allocation method (or another method) given the fast-changing and largely inconsistent nature of the broadcasting industry. It is our view that past financial performance (measured by earnings) is not as good a proxy for future performance. It is hard to fathom any degree of certainty about future earnings in a broadcasting environment that is facing such rapid technological change and restructuring.

30. The primary reason for amending an evaluative mechanism that "best assesses the value of assets" cannot be based on lament for its level of complexity or administrative costs. Valuation is an inherently complex process. Furthermore (as

[8] See CRTC 2008-57

stated above), the Commission already provides a degree of flexibility and relief to broadcasters should the DCF method prove too onerous and cause undue financial hardship. We see no reason why this relief cannot be granted, as necessary, while maintaining the more appropriate DCF model.

Unifor's Recommendation

31. ***The Commission should preserve the current practice of asset valuation, as per its decision reached in 2008-57.***

32. ***Broadcasters (and their valuation experts) should work more closely with the Commission as valuations are conducted and presented, to better streamline the process.***

Other Related Matters for the Commission's Consideration

33. The Commission's forthcoming public consultation on television in Canada offers an important opportunity to carefully evaluate the state of local news and non-news programming. Unifor looks forward to engaging with the Commission on this matter, re-emphasizing the need for a vibrant local television industry, as well as a reliable and sustainable funding model.

34. Unifor's proposals on the Commission's review of tangible benefits must not be misinterpreted as a solution to the economic, social and employment challenges our local television sector faces. The Commission must use the upcoming consultation to obtain a clear record about the state of local television in Canada (where accurate and reliable data on local programming is largely absent in the general discussion); provide Canadians an opportunity to comment on this sector; and develop a policy for local programming (that considers, within it, clear minimum local content criteria) that strengthens local programming and increases original local content that informs, enlightens and entertains, over the long term.

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