



## Broadcasting Decision CRTC 2004-398

Ottawa, 31 August 2004

### **591987 B.C. Ltd., a subsidiary of Corus Entertainment Inc.**

Kingston, Brighton, Prescott and Smiths Falls, Oshawa, Peterborough and Bancroft, Ontario

*Applications 2003-0519-5, 2003-1916-2, 2003-1917-0, 2003-0521-0 and 2003-0520-3  
Public Hearing in the National Capital Region  
7 June 2004*

### **CKWS-TV Kingston and its transmitter, CHEX-TV-2 Oshawa and CHEX-TV Peterborough and its transmitter – Licence renewals**

### **CKWS-TV-1 Brighton and CKWS-TV-2 Prescott – Issuance of new licences**

*The Commission **renews** the broadcasting licences for the following three television programming undertakings: CKWS-TV Kingston and its transmitter CKWS-TV-3 Smiths Falls; CHEX-TV-2 Oshawa; and CHEX-TV Peterborough and its transmitter CHEX-TV-1 Bancroft. The Commission **approves** the further applications for the deletion from the licence of CKWS-TV Kingston of its transmitters CKWS-TV-1 Brighton and CKWS-TV-2 Prescott, and for broadcasting licences to continue the operation of the Brighton and Prescott facilities as new television programming undertakings to broadcast locally-produced programming split fed from that broadcast on CKWS-TV Kingston.*

### **The applications**

1. The Commission received applications by 591987 B.C. Ltd. for the renewal of the broadcasting licences it holds for the television programming undertakings CKWS-TV Kingston and its transmitter CKWS-TV-3 Smiths Falls, CHEX-TV-2 Oshawa, and CHEX-TV Peterborough and its transmitter CHEX-TV-1 Bancroft. The Commission also received applications for the deletion from the licence of CKWS-TV Kingston of its transmitters CKWS-TV-1 Brighton and CKWS-TV-2 Prescott, and for broadcasting licences to continue the operation of the Brighton and Prescott facilities as new television programming undertakings. The new stations at Brighton and Prescott would each broadcast a certain amount of local programming that would be split fed from the programming broadcast on CKWS-TV Kingston.
2. The Kingston, Oshawa, Peterborough, Brighton and Prescott television stations would each continue as an affiliate of the English-language television network of the Canadian Broadcasting Corporation (CBC). A **condition of licence** to this effect is set out in the

appendix to this decision. The Commission notes that the priority programming aired by CKWS-TV, CKWS-TV-1, CKWS-TV-2, CHEX-TV-2 and CHEX-TV will originate with the CBC.

3. The Commission acknowledges the 88 interventions that were filed in support of one or other of the applications for licence renewal.
4. The licensee, 591987 B.C. Ltd., is an indirectly-owned and controlled subsidiary of Corus Entertainment Inc. (Corus). Corus has extensive broadcast holdings, including controlling interests in numerous radio and television stations in Eastern and Western Canada, as well as in many national specialty television services, two regional pay television services, and a national pay audio service. In March 2000, Corus acquired indirect ownership of the assets of the television stations that are the subject of this decision, as well as the assets of CHAU-TV Carleton, Quebec, and those of a large number of radio stations in Ontario and Quebec, from Power Broadcasting Inc. and Télévision de la Baie des Chaleurs inc. [see *Acquisition of assets*, Broadcasting Decision CRTC 2000-87, 24 March 2000 (Decision 2000-87)].
5. The overall purchase price of the transaction approved in Decision 2000-87 was \$107.5 million. Of the total purchase price, \$57.5 million was assigned to the television assets. The tangible benefits package that Corus proposed in relation to its purchase of the television assets represented proposed expenditures of \$5.75 million, or 10% of the value assigned to those assets. These benefits were all national in scope, and were not apportioned among the individual television undertakings. They were to be implemented over seven years, and included the contributions summarized below:
  - \$1,000,000 to the Canadian Film Centre towards the establishment of a new digital animated film production studio.
  - \$4.25 million to finance special family programs in drama, music and variety (categories 7, 8 and 9) to be exhibited on the Canadian Broadcasting Corporation's national television networks with second windows available to Country Music Television and YTV.
  - \$500,000 to Canadian Women in Communications to fund seminars on executive training in the television field.
6. Subsequently, by letter of approval dated 21 November 2000, the Commission approved an application for authority to transfer control of 591992 B.C. Ltd., the Corus subsidiary and licensee of CHAU-TV Carleton, to a company effectively controlled by Télé Inter-Rives ltée (Inter-Rives). In its application, Inter-Rives had proposed tangible benefits of \$700,000 over a seven year period. As the Commission stated in its letter of approval, this amount was in line with the Commission's benefits policy outlined in *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999 (the television policy).

7. In later sections of this decision, the Commission reviews the performance of 591987 B.C. Ltd. in its capacity as licensee of the three Ontario television stations, and examines the commitments contained in its renewal and new licence applications against the framework of the television policy. First, however, the Commission addresses a matter concerning the licensee's implementation of a significant portion of the benefits package that had been offered by Corus in its applications to purchase the assets of these and other broadcasting undertakings, as approved in Decision 2000-87.

## **Responsibility for the benefits**

### **Background**

8. On 5 December 2003, as part of the licence renewal process, the Commission asked 591987 B.C. Ltd. to file a report regarding its expenditures on the benefits associated with the sale of the television assets approved in Decision 2000-87. The applicant filed its report in a letter dated 8 January 2004, which provided a summary of the disbursement of tangible benefits to date. The letter also identified \$5.05 million as the total value of the benefits package for which 591987 B.C. Ltd. was responsible under that transaction. According to the licensee, this reflected a reduction of the total benefits by \$700,000, an amount equal to the value of the tangible benefits proposed by Inter-Rives in its application to acquire effective control of CHAU-TV. The licensee further indicated that it had confirmed this reduction with Commission staff.
9. The Commission's records indicate that 591987 B.C. Ltd. had filed a letter dated 21 December 2000, in which it requested the Commission's confirmation that Corus was authorized a reduction of \$700,000 in the licensee's responsibility for expenditures on benefits associated with the transaction approved in Decision 2000-87. The \$700,000 equalled the tangible benefits proposed by Inter-Rives in its application to acquire effective control of CHAU-TV. The letter indicated the licensee's plans to reduce the grant to Canadian Women in Communications by \$75,000 to \$425,000, and the contribution to the Family Specials Programming Fund by \$625,000 to \$3,625,000. The \$1,000,000 contribution to the Canadian Film Centre would remain unchanged.
10. The Commission's files, however, indicate that the Commission did not respond to the licensee's letter of 21 December 2000, either with a letter of approval or a decision on the licensee's request. Moreover, neither the file for CHAU-TV nor the application for the transfer of control of the licensee company of that station from Corus to Inter-Rives contain mention of a proposal to transfer responsibility for tangible benefits from the vendor to the purchaser. In fact, rather than indicate that it would be assuming responsibility for existing benefits, Inter-Rives had stated in its application that the \$700,000 it was proposing as tangible benefits represented the 10% value of the transaction, as called for under the Commission's benefits policy.
11. On 17 March 2004, as part of the renewal process, the Commission asked 591987 B.C. Ltd. to explain how the portion of the benefits that it appeared to assign to the purchase of the assets of CHAU-TV and its transmitters in 2000 would be fulfilled. In addition, the Commission asked the licensee to explain how it had arrived at the figure of

\$700,000 as the appropriate portion of the overall benefits package to assign to these assets, given that there had been no clear evidence in the applications filed for the transfer of the television assets approved in Decision 2000-87 that any distinct and separate amounts had been allocated to the individual television stations involved.

#### **The licensee's position**

12. 591987 B.C. Ltd.'s response to the Commission was contained in a letter dated 25 March 2004. The licensee indicated that it had discussed with the Commission, at the time it purchased the assets of these stations, its intention to divest itself of CHAU-TV and its transmitters. It added, however, that it had not been able to finalize the terms of an agreement with a third party for such divestiture by the time that it had filed the application to acquire the assets of that station. The Commission notes that there was no formal request made at the time that the Commission consider certain of the benefits reassigned upon a further transfer. The licensee indicated that it had been advised by Commission staff to include proposed benefits as part of its application to acquire the assets of CHAU-TV. According to the licensee, it was further advised by staff that, once the transaction was completed, it should write to the Commission to request a reduction in the benefits package. In its 25 March 2004 letter, the licensee claimed that, when a Commission response was not forthcoming to its 21 December 2000 letter, it believed that its proposal was acceptable and understood that the benefits package relating to Decision 2000-87 had been revised from \$5.75 million to \$5.05 million.
13. 591987 B.C. Ltd. added that Corus did not profit from this transaction. Specifically, the licensee stated that the value placed on the assets of CHAU-TV at the time of the Corus purchase was \$7 million, which was the same amount paid by Inter-Rives some eight months later for the shares of the company that held the CHAU-TV licence. The licensee added that, it had been on the basis of this valuation that Inter-Rives had proposed benefits of \$700,000.

#### **The Commission's analysis**

14. As mentioned above, the benefits offered by Corus in its applications to purchase the television assets of Power Broadcasting Inc. and Télévision de la Baie des Chaleurs inc., as approved by Decision 2000-87, were in respect of a number of television undertakings; no separate amount was specifically allocated to the assets of CHAU-TV or any of the other individual stations. In addition, none of the benefits attached to the transaction applied directly to CHAU-TV, and all were national in scope.
15. Moreover, in the application filed by Inter-Rives to acquire effective control of the Corus-owned company that then held the licence for CHAU-TV, there was no request or intention expressed by the parties to have responsibility for any portion of the benefits approved in Decision 2000-87 transferred from the vendor to the purchaser. In fact, Inter-Rives proposed, and the Commission accepted, Inter-Rives' own, separate benefits package totalling \$700,000.

16. The Commission notes that the licensee assumed that the Commission had accepted a reduction in the benefits approved in Decision 2000-87 despite the fact that the Commission had provided no such confirmation.
17. Given all of the circumstances, the Commission considers that the licensee remains responsible for making the expenditures associated with the total package approved in Decision 2000-87 and should disburse the funds as originally committed to within the seven-year limit. Accordingly, the Commission expects the licensee to retire, by the end of March 2007, the outstanding benefits of \$5.75 million related to the tangible benefits which had been noted in Decision 2000-87. The Commission further expects that the outstanding benefits will be paid out as detailed in that decision. Further, the Commission requires the licensee to submit annual reports, by no later than 30 November in each year, detailing its expenditures for the period ending 31 August of that year. The Commission reminds the licensee that the information concerning these expenditures should also be included in the annual returns of each station as allocated.

## **Other matters**

### **Local reflection**

18. Historically, the Kingston and Peterborough stations have been expected to provide a weekly minimum of 9 hours 10 minutes, and 9 hours, respectively, of local programming on CKWS-TV Kingston and CHEX-TV Peterborough. In the case of both stations, most of this programming now consists of local news. For the new licence term, the licensee has committed to provide a minimum weekly average of 11 hours on each station of original programming reflective of the community.
19. In accordance with the Commission's 1993 decision granting a licence to Power Broadcasting Inc. for the operation of CHEX-TV-2 Oshawa [*New television programming undertaking*, Decision CRTC 93-633, 28 September 1993 (Decision 93-633)], the current licensee is expected to offer a minimum average of 3 hours per week of original, station-produced programming distinct from that broadcast on CHEX-TV Peterborough. The licensee's local reflection programming, which consists of news, general entertainment, and human interest programs, currently exceeds 3 hours per week. For the new licence term, the licensee has committed to broadcast a weekly average of 12 hours of original programming reflective of the community.
20. With respect to the transmitters of CKWS-TV Kingston at Brighton and Prescott, the licensee indicated that CKWS-TV-1 Brighton now airs 20 minutes per day of split feed programming (10 minutes during each of the 6:00 p.m. and 11:00 p.m. newscasts), while CKWS-TV-2 Prescott airs a 9 minute segment on Saturday split fed from the programming of CKWS-TV Kingston. The applicant did not indicate any plans to increase the amount of split-fed programming in its applications for licences to continue the operation of each of these transmitters as a new television undertaking in its own right.

21. The Commission expects the licensee, at a minimum, to maintain, throughout the new licence term, the average weekly levels of local programming noted above for each of CKWS-TV Kingston, CHEX-TV Peterborough and CHEX-TV-2 Oshawa. In the case of the new television undertakings at Brighton and Prescott, the Commission encourages the licensee to increase the amount of split-feed news programming it broadcasts, as resources permit, with a view to improving service to the Belleville-Trenton and Brockville-Prescott areas.

#### **Reflection of Canada's diversity**

22. All broadcasting licensees have a responsibility to contribute to the reflection and portrayal of Canada's cultural diversity in furtherance of the policy objectives contained in section 3(1)(d) of the *Broadcasting Act* (the Act). Specifically, broadcasters share responsibility for assisting in the development of a broadcasting system that accurately reflects Canada's ethno-cultural minorities and Aboriginal peoples. Broadcasters must therefore ensure that the portrayal of such groups, through their presence and participation on-screen, is accurate, fair and non-stereotypical.
23. The Commission notes that CKWS-TV Kingston, CHEX-TV-2 Oshawa and CHEX-TV Peterborough have been broadcasting the program *Spirit Alive* and will continue to air this "faith based" program produced by the Tyendinaga First Nation's people in Deseronto. The Commission also notes the licensee's statement that it adheres to the corporate diversity plan of its parent, Corus.
24. As noted in *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004, the Commission considers that the improved reflection and portrayal of persons with disabilities is also an important objective. The Commission notes that the Canadian Association of Broadcasters (CAB) is developing a plan to examine issues surrounding the presence, portrayal and participation of persons with disabilities in television programming. The Commission considers that initiatives designed to make programming more reflective and inclusive of Canada's ethno-cultural diversity can, in many cases, be extended or adapted to also ensure fair, balanced and inclusive reflection and representation of persons with disabilities. Accordingly, the Commission expects the licensee to include persons with disabilities in its corporate planning for cultural diversity.

#### **Service to persons who are deaf or whose hearing is impaired**

25. In *Licence Renewal for CKWS-TV Kingston, CKWS-TV-1 Brighton and CKWS-TV-2 Prescott* and *Licence renewal for CHEX-TV Peterborough and its transmitter*, Decisions CRTC 95-104 and 95-109, 24 March 1995, the Commission expected the licensee, by 31 August 2002, to caption all local news programming and at least 90% of all programming during the broadcast day. The Commission's analysis of the logs for CKWS-TV Kingston revealed that, during the 2002-2003 broadcast year, 591987 B.C. Ltd. had captioned 100% of all local news programming, but only 87% of the overall programming broadcast by that station. The Commission's analysis of the logs for

CHEX-TV Peterborough revealed that, during the 2002-2003 broadcast year, the licensee had captioned only 91% of all local news programming and only 80% of the overall programming broadcast on that station. With respect to CHEX-TV-2 Oshawa, Decision 93-633 contained no expectation regarding closed captioning. The Commission's analysis of that station's program logs indicated that, during the 2002-2003 broadcast year, the licensee had captioned 85% of all local news programming and 69% of overall programming.

26. In its applications, the licensee explained that it currently provides captioning for all scripted portions of the newscast and all locally produced news and sports items, but that certain live newscast segments and network-sourced stories were not captioned. The licensee made a commitment to caption 100% of all local news programming and 90% of overall programming broadcast on CKWS-TV, CHEX-TV-2 and CHEX-TV by the end of the new licence term,
27. Given the nine years that have elapsed since the date by which two of the stations, CKWS-TV and CHEX-TV, had been expected by the Commission to provide, at a minimum, closed captions for all local news programming and for at least 90% of all programming during the broadcast day, the Commission considers that the licensee must improve its performance in this area, beginning early in the new licence term.
28. Additionally, the Commission has imposed a **condition of licence**, in respect of each new or renewed licence approved by this decision, requiring the licensee, beginning 1 September 2005, to caption 90% of all programming during the broadcast day, including all category 1 – News programming.

#### **Service to persons who are blind or whose vision is impaired**

29. Section 3(1)(p) of the Act states that, as part of the broadcasting policy for Canada, "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose." Accordingly, the Commission expects all broadcasters to work toward improving the accessibility of their programming for persons who are blind or whose vision is impaired.
30. Greater programming accessibility can be achieved through the provision of audio description<sup>1</sup> and/or of video description<sup>2</sup>. All broadcasters can, and should, provide audio description. The licensee indicated that it currently provides audio descriptions of sports scores, weather information, stock indices and station news contact information. The Commission expects the licensee to continue to provide audio description wherever appropriate.

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<sup>1</sup> Audio description consists of basic voice-over recitations or descriptions of the text or graphic information that is displayed on the screen. Although a measure of sensitivity and creativity on the part of a broadcaster is necessary to ensure the quality and effectiveness of audio description, no special equipment is required.

<sup>2</sup> Video description, or described video, takes the form of a narrative description of a program's key visual elements which permits the audience to create a mental image of what is on the screen. It is generally provided using the secondary audio program (SAP) channel.

31. In its last licence renewal, the CBC was encouraged to provide programming with video descriptions. Over the course of the stations' licence term, the CBC is likely to present some described programs. The licensee, however, stated that it does not currently have the capability to use the secondary audio program (SAP) channels, which would allow the stations to provide this service to viewers who are visually impaired. Accordingly, the Commission expects the licensee to include the capability to use the SAP channel as part of the stations' normal technical upgrades, in order to deliver the video description associated with these programs to its audience. At the next licence renewal, the licensee will be asked to make specific hourly commitments for described video.

#### **Employment equity and on-air presence**

32. Because this licensee is subject to the *Employment Equity Act* and files reports with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.
33. With respect to on-air presence, the Commission expects the licensee to ensure that its programming is reflective of Canadian society and that members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) are presented fairly and accurately.

#### **Conclusion**

34. The Commission is generally satisfied that, during the current licence term, the licensee has adhered to the requirements of the *Television Broadcasting Regulations, 1987*, and has complied with its conditions of licence and the Commission's expectations, specifically those regarding Canadian programming and local news.
35. On the basis of its review of these licence renewal applications, the Commission **renews** the broadcasting licences for CKWS-TV Kingston and its transmitter CKWS-TV-3 Smiths Falls, for CHEX-TV-2 Oshawa, and for CHEX-TV Peterborough and its transmitter CHEX-TV-1 Bancroft, from 1 September 2004 to 31 August 2011. The Commission also **amends** the licence for CKWS-TV Kingston by deleting the transmitters CKWS-TV-1 Brighton and CKWS-TV-2 Prescott, and **approves** the applications for licences to operate those facilities as new television programming undertakings. The licences for CKWS-TV-1 Brighton and CKWS-TV-2 Prescott will expire 31 August 2011. Each of the new or renewed licences will be subject to the **conditions** set out in the appendix to this decision.
36. The licensee has indicated that it plans to sell commercial availabilities locally for broadcast on the Brighton station, separately from those broadcast on CKWS-TV. In accordance with its policy linking the authority to solicit local advertising with the provision of local programming, and consistent with an existing condition of the licence issued in respect of CHEX-TV-2 Oshawa, the Commission has decided to authorize



591987 B.C. Ltd. to broadcast a maximum of 6.5% of the commercial availabilities on the proposed Brighton station separately from those broadcast on CKWS-TV, for each hour of original, station-produced programming broadcast exclusively each week. A **condition of licence** to this effect is set out in the appendix to this decision.

37. The Commission notes that the issuance of separate licences for CKWS-TV-1 Brighton and CKWS-TV-2 Prescott has potential implications for broadcasting distribution undertakings (BDUs). For example, pursuant to the *Broadcasting Distribution Regulations*, CKWS-TV-1 Brighton and CKWS-TV Kingston will both be local television stations in relation to the BDU serving Belleville. Therefore, the BDU serving Belleville would be required to distribute both signals. With regard to the Brockville BDU, the Commission notes that CKWS-TV-2 Prescott will provide a local signal, while the signal of CKWS-TV Kingston will become a regional signal.
38. Given that, apart from the split-feed programming, the schedules of the three stations will be the same, the Commission will consider applications from the licensees of affected BDUs for conditions of licence exempting them from the requirement to distribute CKWS-TV Kingston.

Secretary General

*This decision is to be appended to each licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>*

## **Appendix to Broadcasting Decision CRTC 2004-398**

### **Conditions of licence for all stations**

1. The licensee shall operate these undertakings as affiliates of the English-language television network operated by the Canadian Broadcasting Corporation.
2. The licensee shall caption 90% of all programming during the broadcast day, including all category 1 – News programming.

### **Conditions of licence for CKWS-TV-1 Brighton**

In addition to conditions of licence 1 and 2 above, the licensee will be subject to the following condition:

3. The licensee may broadcast a maximum of 6.5% of the commercial availabilities on the Brighton undertaking separately from those broadcast on CKWS-TV Kingston, for each hour of original, station-produced programming it broadcasts exclusively on its Brighton undertaking each week.

### **Conditions of licence for CHEX-TV-2 Oshawa**

In addition to conditions of licence 1 and 2 above, the licensee will be subject to the following condition:

3. The licensee may broadcast a maximum of 6.5% of the commercial availabilities on the Oshawa undertaking separately from those broadcast on CHEX-TV Peterborough, for each hour of original, station-produced programming it broadcasts exclusively on its Oshawa undertaking each week.