



Broadcasting Decision CRTC 2005-84

Ottawa, 28 February 2005

3216195 Canada Inc.
Across Canada

*Application 2004-0543-2
Broadcasting Public Notice CRTC 2004-90
24 November 2004*

Rogers Sportsnet DTH-PPV – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the national English-language direct-to-home pay-per-view television service known as Rogers Sportsnet DTH-PPV, from 1 March 2005 to 31 August 2011.*

The details regarding the licensee's specific proposals for the new licence term, and the conditions of licence and other obligations determined by the Commission are set out below.

The application

1. The Commission received an application by 3216195 Canada Inc. for the renewal of the broadcasting licence for the national English-language direct-to-home (DTH) pay-per-view (PPV) television service known as Rogers Sportsnet DTH-PPV. The service is dedicated to live sports events and other special events.
2. The Commission did not receive any interventions in connection with this application.

The Commission's analysis and determination

Distribution of programming produced by the licensee or person related to the licensee

3. As part of its licence renewal application, the licensee proposed to delete the condition of licence that prohibits it from distributing programming, other than filler programming, produced by the licensee or a person related to the licensee.
4. The licensee proposed instead a condition of licence that would allow it to distribute programming, other than filler programming, produced by the licensee or a person related to the licensee. The licensee made a commitment to devote a maximum of 50% of the total hours of its Canadian programming schedule in each broadcast year to such programming.

5. Given the nature of Rogers Sportsnet DTH-PPV service and the fact that no one opposed the licensee's request, the Commission finds that approval of the request is appropriate.
6. The Commission **approves** the licensee's request to allow the distribution of programming produced by the licensee or by a person related to the licensee up to a maximum of 50% of the total hours of the Canadian programming broadcast in each broadcast year. A **condition of licence** to that effect is set out in the appendix to this decision.

Restriction of commercial messages

7. In *New, national, direct-to-home, English-language pay-per-view television programming undertaking - Approved*, Decision CRTC 95-907, 20 December 1995, which originally licensed Rogers Sportsnet DTH-PPV, the Commission imposed the following condition of licence:

The licensee shall ensure that commercial messages contained in the programming it packages for distribution by licensed DTH distribution undertakings are restricted to those contained in the live feed of out-of-market programming in the category of sports.

8. Since that time, the definition of commercial message has been amended in the *Pay Television Regulations* (the Regulations) to permit the carriage of certain types of advertisements.
9. As part of its licence renewal application, the licensee requested that the Commission delete the condition of licence noted above. The licensee proposed that, during the new licence term, it be subject to the general definitions and provisions set out in the Regulations rather than the specific condition of licence. In support of its request, the licensee submitted that deleting the condition of licence would remedy the discrepancy between its DTH-PPV service, which is prohibited from carrying commercial messages in local market sports games, and its terrestrial PPV service, which can carry commercial messages in all sports games, whether they are local or out-of-town.
10. The Commission notes that the deletion of the condition of licence will make the requirements of the licensee's DTH-PPV service in this regard consistent with those imposed on its terrestrial PPV service.
11. The Commission **approves** the licensee's request and deletes the condition of licence noted above. The licensee will be subject to the relevant provisions of the Regulations.

Cultural diversity

12. The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of cultural and racial minorities and Aboriginal peoples. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and free of stereotypes.
13. The Commission notes that Rogers has filed a corporate cultural diversity plan with the Commission setting out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to the presence and portrayal of cultural diversity. The Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in its corporate cultural diversity plan.

Employment equity and on-air presence

14. Pursuant to section 5(4) of the *Broadcasting Act*, the Commission does not regulate or supervise matters concerning employment equity in relation to broadcasting undertakings with more than 100 employees, as they are subject to the *Employment Equity Act*. However, as indicated in *Consultations regarding on-air job categories to be included in the employment equity plans of broadcasters*, Public Notice CRTC 1994-69, 10 June 1994 and *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission continues to regulate matters such as on-air presence.
15. The Commission expects licensees to ensure that the on-air presence of members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) is reflective of Canadian society, and that members of these groups are presented fairly and accurately.

Service to persons who are deaf or hard of hearing

16. The Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed captioned programming they broadcast. The Commission generally requires all broadcasters to offer a minimum percentage of closed captioned programs consistent with the nature of their services. Most English-language services must close caption at least 90% of their programming.
17. In the present case, the licensee made a commitment to close caption 90% of all the programming it produces for broadcast on Rogers Sportsnet DTH-PPV by the sixth year of the new licence term. The licensee did not make a firm commitment with respect to the programming acquired from outside sources. It stated that closed captioning of live sports is expensive and not always available and added that, if the Commission were to require closed captioning of 90% of all Rogers Sportsnet DTH-PPV's programming, it would be unable to carry certain sports programming for which closed captioning is

unavailable or too expensive. According to the licensee, a 90% closed captioning requirement would limit the diversity of sports programming available on its service. The licensee noted that other PPV licensees have been granted flexibility with respect to their closed captioning requirements in recognition of concerns with respect to affordability or lack of availability. Moreover, the licensee submitted that, given that all its programming is live sports events and related programming, its closed captioning commitment is appropriate.

18. The Commission recognizes that a requirement of 90% closed captioning may be difficult to achieve for live sports programming. Nevertheless, in the Commission's view, the cost of offering closed captioning is part of the expense of holding a broadcasting licence. Consistent with the Commission's general approach for English-language services and in keeping with the approach applied to other PPV services, the Commission is imposing a **condition of licence** requiring the licensee to close caption 90% of all programs aired during the broadcast year, beginning not later than 1 September 2009. The condition of licence is set out in the appendix to this decision.
19. The Commission also expects the licensee to continue to focus on improving the quality, reliability and accuracy of its closed captioning, and to work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet that community's needs.

Service to persons who are blind or whose vision is impaired

20. The Commission is committed to improving the television service available to persons with visual impairments through the provision of audio description¹ and video description (also known as described video).²
21. The licensee stated that the coverage of sports events is highly descriptive in nature and that textual information such as scores, statistics and other information shown on the screen is often described to provide improved access to viewers who have visual impairments.
22. The Commission expects that, during the new licence term, the licensee will:
 - provide audio description (defined as the provision of basic voice-overs of textual or graphic information on screen), wherever appropriate;

¹ Audio description involves the provision of basic voice-overs of textual or graphic information displayed on the screen. A broadcaster providing audio description will, for example, not simply display sports scores on the screen, but also read them aloud so that people who are visually impaired can receive the information.

² Video description, or described video as it is also known, consists of narrative descriptions of a program's key visual elements so that people who are visually impaired are able to form a mental picture of what is occurring on the screen.

- acquire and broadcast the described versions of a program, wherever possible; and
- take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

Compliance with industry codes

23. In accordance with its usual practice for pay-per-view services, the Commission is imposing **conditions of licence** requiring the licensee to adhere to the industry code related to sex-role portrayal, and the *Pay television programming standards and practices code* and the *Pay television and pay-per-view programming code regarding violence*.

Conclusion

24. On the basis of its review of this licence renewal application, the Commission **renews** the broadcasting licence for Rogers Sportsnet DTH-PPV, from 1 March 2005 to 31 August 2011. The licence will be subject to the conditions specified therein and to the conditions set out in the appendix to this decision.

Secretary General

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

Appendix to Broadcasting Decision CRTC 2005-84

Conditions of licence

1. The licensee shall provide a national English-language direct-to-home (DTH) pay-per-view (PPV) television service. The licensee shall draw its programs exclusively from the categories set out in item 6 of Schedule 1 to the *Pay Television Regulations, 1990* with the exception of categories 7 (Drama and Comedy), 8 (Music and dance) and 10 (Game shows).
2. The licensee shall, through its agreements with the licensees of DTH distribution undertakings, ensure that a minimum of 20% of the total number of hours of live sports events and special events that is made available in each broadcast year by the licensees of DTH distribution undertakings to their pay-per-view subscribers is Canadian.
3. The licensee is authorized to distribute programming, other than filler programming, which is produced by the licensee or by a person related to the licensee, but such programming shall not exceed, in each broadcast year, 50% of the total hours of its Canadian programming broadcast in each broadcast year.
4. The licensee shall contribute a minimum of 5% of the gross annual revenues earned by its pay-per-view television programming undertaking to an existing, independently-administered, Canadian program production fund. Contributions to the fund shall take the form of monthly instalments paid within 45 days of month's end and representing a minimum of 5% of that month's gross revenues.
5. The licensee shall not sell, or accept compensation for, any commercial message on the service.
6. The licensee shall not acquire exclusive or other preferential rights to any pay-per-view programming exhibited as part of its service.
7. The licensee shall not enter into an affiliation agreement with the licensee of a DTH distribution undertaking, unless the agreement incorporates a prohibition against linkage of the licensee's service with any non-Canadian discretionary service.
8. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast year, beginning no later than 1 September 2009.

9. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council.
10. The licensee shall adhere to the *Pay television programming standards and practices code*, as amended from time to time and accepted by the Commission.
11. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and accepted by the Commission.

For the purpose of these conditions, the term "broadcast year" shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*.