



Broadcasting Notice of Consultation CRTC 2009-132

Ottawa, 11 March 2009

Notice of hearing

2 June 2009

Gatineau, Quebec

Canadian Broadcasting Corporation called to a hearing

Deadline for submission of interventions/comments: 15 April 2009

The Commission will hold a hearing commencing on **2 June 2009 at 9:00 a.m. at the Conference Centre, Portage IV, 140 Promenade du Portage, Gatineau, Quebec.**

[\[Broadcasting interventions/comments form\]](#)

1. **Across Canada**
Reference No. 2009-0371-7

Background

In 2000, the Commission approved an application by Corus Entertainment Inc. and the Canadian Broadcasting Corporation (CBC) for a new national English-language Category 1 specialty television service to be called Land and Sea in *Land and Sea – a new specialty channel*, Broadcasting Decision CRTC 2000-453, 14 December 2000 (Decision 2000-453). The Commission set out the following nature of service as a condition of licence:

The licensee shall provide a national English-language Category 1 specialty television service for rural Canadian families, with a focus on adults 25-54. The service will provide information, interaction and entertainment from a rural perspective.

For the purposes of this condition, “rural Canadians” shall be defined as individuals who live outside of the large urban centres, in small communities, and who predominantly make their living from the land and sea and/or through businesses that are directly associated with those that do.

The service subsequently changed its name to Country Canada.

In 2002, the Commission approved the transfer of effective control of Country Canada to the CBC in *Transfer of effective control of 3899071 Canada Inc.*, Broadcasting Decision CRTC 2002-336, 24 October 2002.

The Issue

On 26 October 2007, Commission staff met with representatives of the CBC to discuss its plan to re-brand Country Canada as **bold**. At that meeting, the CBC submitted that this change could be done without amending the nature of service of Country Canada.

On 27 November 2007, Commission staff sent a letter to the CBC advising that a departure from Country Canada's current nature of service with respect to providing television service to rural Canadians from a rural perspective would require Commission approval of an application to amend this condition of licence.

Country Canada relaunched as **bold** on 27 March 2008.

In a letter dated 24 April 2008, Commission staff reiterated the nature of service as set out in Decision 2000-453 and noted the description of **bold** that is found on CBC's website: "bold, which replaces CBC Country Canada, is home to the world's best performing arts, intelligent drama and daring comedy."

Commission staff also acknowledged in that letter that Country Canada's licensing decision sets out a broad range of programming categories that may be broadcast. However, Commission staff requested clarification on how this new programming format was consistent with the nature of service condition of licence regarding the provision of programming for rural Canadian families from a rural perspective.

In its response, dated 9 May 2008, the CBC described its service programming goals as follows:

- provide Canadians with programs that reflect and embrace rural interest and values;
- enhance the access of Canadians, particularly the ones living outside of large urban centres, to more performance-based programming;
- offer new programs to its subscribers.

The CBC added that "[t]he emphasis in our marketing and in the schedule on performance-based programming we believe is consistent with our nature of service condition of licence. Further, the channel is not prohibited from carrying this type of programming and we think its presence on "bold" is of value to Canadians, particularly rural Canadians."

The CBC also stated that "The service was having no impact in the marketplace and therefore, was not achieving its goals. Based on our discussions with [Broadcasting Distribution Undertakings (BDUs)] and with subscribers, it was clear to us that Country Canada had an identity problem. Potential subscribers did not know what the channel was about and BDUs did not know how to package and market it."

Commission staff, in its analysis of the 9 May 2008 response from the CBC, focused on the following element of the nature of service condition of licence:

The licensee shall provide a national English-language Category 1 specialty television service **for rural Canadian families**, with a focus on adults 25-54. The service will provide information, interaction and entertainment **from a rural perspective**. (Emphasis added)

Though the CBC provided specific examples of programs that “reflect and embrace rural interests and values,” it was the view of Commission staff that the CBC failed to provide sufficient evidence that overall the programming broadcast on *bold* was consistent with the requirement to “provide information, interaction and entertainment from a rural perspective.”

In a letter dated 28 May 2008, Commission staff directed the CBC to demonstrate, by no later than six months from the date of the letter, that it had taken the necessary measures to ensure that the program schedule of Country Canada, now known as *bold*, complies with the requirement that the overall programming broadcast on the service “provide information, interaction and entertainment from a rural perspective.”

In its response, dated 28 November 2008, CBC maintained that *bold* continues to fulfil the niche in which it was originally licensed. As part of its rationale, the CBC noted:

- the service, though originally intending to commission/develop original programming, never achieved the penetration and revenue projections and so has had to depend upon off the shelf programming and that the overall schedule has never been from a “rural perspective”;
- in the information age, where you live is less of a factor and a “rigid view of *bold*’s nature of service is ... inappropriate” and will not allow *bold* to be “relevant, attract or even retain television viewers.”; and
- the results of a CBC commissioned Ipsos Reid survey as evidence that rural Canadians value *bold*.

The CBC also noted that MenTV is the only other service to have a nature of service with a requirement to provide programming from a particular “perspective” and argued that it would not know how that service would be making programming decisions from a “Canadian men’s perspective” other than in an after the fact manner by determining whether its audience is made up predominantly of men.

The CBC stated that if Commission staff still did not agree with the CBC perspective, that there would be no other option than to file an application to amend *bold*’s nature of service condition.

Commission staff presented the correspondence on this issue to the Commission and the Commission made the following observations. The CBC was well aware of the requirement to apply to the Commission for an amendment to its nature of service definition if it were intending to change the programming strategy of the service and yet, it went ahead with the change in spite of that knowledge.

The CBC has not provided sufficient evidence that the rebranding of bold is consistent with the nature of service condition of licence and that the following excerpt from the original licensing decision (Decision CRTC 2000-453) further supports the position that the programming strategy for bold is inconsistent with the original licensing decision:

Land and Sea will contribute to increased diversity in the Canadian broadcasting system by providing original news coverage of rural industries and issues, in a level of detail not currently found in the Canadian broadcast system. The majority of current Canadian television services are urban-oriented. This diverse new service will emphasize rural themes, and embrace and respect rural values and lifestyles. The variety of attractive rural-based programming that Land and Sea will offer will add greatly to the diversity of voices in the broadcasting system. In order to protect this enhanced diversity, the Commission expects that the CBC will not in any way reduce the presentation of regional programming on its own television networks, following the launch of Land and Sea.

The CBC's actions appear to negatively impact the integrity of the licensing process since Land and Sea was approved to provide a particular service for a particular underserved audience, which it is not doing at this time. In addition, the programming changes appear to be inconsistent with the Commission's policy on program genre exclusivity articulated in *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008.

The Commission intends to inquire into, hear and determine these matters at the public hearing. Therefore, pursuant to section 12 of the *Broadcasting Act*, the Commission calls the Canadian Broadcasting Corporation to a public hearing to be held at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec, commencing on 2 June 2009 at 9:00 a.m., to show cause why a mandatory order requiring the licensee to conform to the *Specialty Services Regulations* concerning the nature of service definition should not be issued.

Licensee's address:

Head Office
P.O. Box 3220, Station C
Ottawa, Ontario
Fax: 613-288-6257
E-Mail: regulatoryaffairs@cbc.ca

Examination of file:

181 Queen Street
Ottawa, Ontario

CRTC – Central Office
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Gatineau, Quebec

Important

The Commission notes that additional documents may be added to the public file subsequent to the issuance of this Notice of consultation. Interested parties are accordingly advised to consult the public file for this item on an ongoing basis.

Public Participation

Deadline for interventions/comments

15 April 2009

The intervention must be received by the CRTC and by the applicant on or before the above-mentioned date. The Commission cannot be held responsible for postal delays and will not notify an intervener whose intervention is received after the deadline date. The intervention will not be considered by the Commission and will not be part of the public file.

The intervention must include one of the following statements in either the first or the last paragraph:

- 1 - I request to appear at the public hearing.
- 2 - I do not want to appear at the public hearing.

Interventions will be considered by the Commission, and will form part of the public record of the proceeding without further notification to intervening parties, provided the procedure set out below has been followed. Parties will be contacted only if their submission raises procedural questions.

Written interventions should be submitted to the Secretary General of the Commission in **only one** of the following formats:

by using the
[\[Broadcasting interventions/comments form\]](#)

Or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

A true copy **must** be sent to the applicant and proof that this has been done must accompany the intervention sent to the Commission.

The Commission advises those who file and serve by electronic mode to exercise caution when using e-mail for service of documents or notification, as it may be difficult to establish that service has occurred.

Parties must ensure, before initiating service through electronic mode, that they will be able to satisfy the Commission, upon request, that service of the notification was completed.

Where the intervention is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Each paragraph of the document should be numbered.

Interventions should clearly identify the application and indicate whether the parties support or oppose the application, or, if they propose changes to it, include the facts and grounds for their proposal.

In the event that the application is brought to the oral phase of the hearing, and if parties wish to appear, they must provide reasons why their written comments are not sufficient and why an appearance is necessary.

Persons requiring communications support such as assistance listening devices and sign language interpretation are requested to inform the Commission at least twenty (20) days before the commencement of the public hearing so that the necessary arrangements can be made.

Important notice

Note that all information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.

The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

Please note that the information parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.

Examination of documents

An electronic version of applications is available from the Commission's website by selecting the application number within this notice.

A list of all interventions/comments will also be available on the Commission's website. An electronic version of all interventions/comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's website.

Documents are also available during normal office hours at the local address provided in this notice and at the Commission offices and documentation centres directly involved with these applications, or, upon request, within 2 working days, at any other CRTC offices and documentation centres.

Location of Commission offices

Toll free Telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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Secretary General

This document 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>.