



Broadcasting Decision CRTC 2009-408

Route reference: 2009-113

Additional references: 2009-70, 2009-70-1, 2009-70-2, 2009-113-1, 2009-113-2 and 2009-279

Ottawa, 6 July 2009

Rogers Broadcasting Limited

Various locations

*The application numbers are set out below.
Public Hearing in the National Capital Region
27 April 2009*

Citytv – Licence renewals

*The Commission **renews** the broadcasting licences for the Citytv conventional television programming undertakings listed in this decision from 1 September 2009 to 31 August 2010. The licence for each undertaking will be subject to the terms and **conditions** in effect under the current licence, which include the conditions set out in Broadcasting Decision 2007-360, as well as the new **conditions of licence** relating to the broadcast of local programming set out in this decision.*

*The Commission **denies** the request by Rogers Broadcasting Limited (Rogers) to remove the conditions of licence relating to priority programming and the conditions of licence relating to the overlap of programming between Citytv and OMNI stations.*

Due to unresolved issues with the filing of logs and records, the Commission is requiring Rogers to file, for the upcoming year, detailed monthly programming reports in addition to its television logs.

Introduction

1. In Broadcasting Notice of Consultation 2009-113, the Commission announced that it would hold a public hearing commencing 27 April 2009 to consider various licence renewal applications for private conventional television programming undertakings. In Broadcasting Notice of Consultation 2009-70, the Commission had indicated that it would be predisposed to issue short-term licences and would focus on certain key issues, including changes to local, priority and independently-produced programming commitments. The Commission notes that, as set out in Broadcasting Regulatory Policy 2009-406, also issued today, it is retaining the condition of licence relating to priority programming as well as the associated expectation relating to independent production. The rationale for each is set out in that regulatory policy.

2. In Broadcasting Notice of Consultation 2009-70, the private conventional television broadcasters were directed to specify any proposed amendments to existing conditions of licence and the reasons for these amendments, as the Commission announced its intention to retain all other conditions of licence as they currently apply.
3. In this context, the Commission received applications by Rogers Broadcasting Limited (Rogers) to renew the broadcasting licences for its five Citytv television programming undertakings serving various locations in Canada. The licence renewals for Rogers' OMNI stations will be the subject of a separate decision to be issued at a later date.
4. Rogers proposed the following amendments to the conditions of licence for its Citytv stations:
 - broadcast a minimum of 20 hours of local programming per broadcast week in each of the markets it serves, of which 10 hours would be devoted to the provision of local news programming;
 - eliminate the requirement to broadcast an average of 8 hours per week of Canadian programs in the priority program categories between 7:00 p.m. and 11:00 p.m.;
 - redirect its baseline spending of \$4.1 million per year for priority programming to support the production of local programming;
 - eliminate the requirement to broadcast a minimum of 100 hours of Canadian long-form features during peak viewing hours per broadcast year and a maximum of 10 hours of feature-length documentaries per broadcast year; and
 - eliminate the following restrictions on programming overlap between Citytv and OMNI television stations:
 - priority programming aired between 7:00 p.m. and 11:00 p.m. must be distinct from the English-language programming broadcast on the OMNI stations in a given market;
 - no more than 10% of all programming broadcast each week shall be broadcast on both the Citytv and OMNI stations in a given market; and
 - no third-language ethnic programming shall be broadcast on both the Citytv and OMNI stations in a given market.
5. As part of this process, the Commission received and considered interventions with respect to each of the applications. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. In Broadcasting Decision 2009-279, the Commission announced that it would renew the licences for the television stations operated by Rogers for a term of one year in order to allow the Commission to consider these stations in the context of group-based (conventional and discretionary services) licence renewals, applications for which will be heard at a public hearing scheduled for the spring of 2010.
7. After examining the applications in light of applicable regulations and policies, including the policy determinations announced in Broadcasting Regulatory Policy 2009-406, and taking into account the interventions received and the applicant's replies to the interventions, the Commission considers that the issues to be addressed in its determinations relate to:
 - allegations of non-compliance with conditions of licence relating to local programming;
 - changes to local programming requirements;
 - issues relating to priority programming;
 - programming overlap with OMNI stations; and
 - logs and records.

Allegations of non-compliance with conditions of licence relating to local programming

8. In its intervention, the Communications, Energy and Paperworkers Union of Canada (CEP) alleged that, as a result of a number of decisions and actions taken, or lack thereof, by Rogers since its acquisition of the Citytv stations, the Rogers television stations in British Columbia were not in compliance with their conditions of licence relating to local programming.
9. However, following an examination of the evidence presented by the CEP, the Commission considers that none of the changes implemented by Rogers resulted in a situation where one of its television stations was operating in non-compliance with its conditions of licence.

Changes to local programming requirements

10. The Commission received several proposals related to the appropriate level of local programming that should be broadcast by television stations operating in English-language metropolitan and non-metropolitan markets.¹

¹ The definitions of metropolitan and non-metropolitan markets are the same as those set out in Broadcasting Public Notice 2008-100. Accordingly, English-language metropolitan television markets are those television markets in which the population with a knowledge of the English language, as defined by Statistics Canada, is one million or more, whereas English-language non-metropolitan television markets are those television markets in which the population with a knowledge of the English language is less than one million.

11. In Public Notice 1999-97, the Commission stated the following:

[...] in the new television environment, there are sufficient market incentives to ensure that audiences will continue to receive a variety of local news without regulatory requirements. News programming is a key element in establishing a station's identity and loyalty with viewers and is generally profitable.

12. However, since the issuance of that public notice, the industry has undergone significant consolidations, and large media companies—detached from the local communities they serve—now operate the majority of conventional television stations. Further, over the course of the current economic downturn, it has been observed that broadcasters are more likely to cut local programming, programming that can entail significant infrastructure costs, rather than make difficult decisions in terms of cutting popular programming. It is the Commission's view that diversity of voices and local reflection are equally as important as, if not more important than, other preoccupations of broadcasters and that such considerations and the public demand for local programming are currently not being appropriately recognized by many within the industry. These two elements are important objectives mandated by the *Broadcasting Act* and the Commission needs to ensure that they are supported by the broadcasting system.

13. Accordingly, the Commission has determined that television stations operating in English-language non-metropolitan markets must broadcast a minimum of seven hours of local programming per broadcast week. Therefore, the Commission requires CHMI-TV Portage La Prairie/Winnipeg to meet this minimum level of local programming over the course of the licence term. A **condition of licence** requiring Rogers to abide by the above requirement is set out in paragraph 36 of this decision.

14. As set out in Broadcasting Regulatory Policy 2009-406, the above-noted television station will not be eligible to receive funding from the Local Programming Improvement Fund if it is not in compliance with this condition of licence.

15. Further, the Commission has determined that televisions stations operating in English-language metropolitan markets must broadcast a minimum of 14 hours of local programming per broadcast week. Accordingly, the Commission requires the following Citytv television stations to meet this minimum level of local programming over the course of the licence term:

CITY-TV and CITY-DT Toronto
CKAL-TV Calgary
CKEM-TV Edmonton
CKVU-TV Vancouver

A **condition of licence** requiring Rogers to abide by the above requirement is set out in paragraph 36 of this decision.

16. In its applications, Rogers indicated that it would be willing to commit to 20 hours or more of local programming, of which 10 hours would be local news programming per broadcast week in each of the markets it serves. The Commission reminds Rogers that the above levels are only minimums and welcomes any additional local programming that Rogers chooses to broadcast in the markets it serves.

17. The Commission notes that it will review these local programming levels in the context of the aforementioned group-based licence renewals, so as to determine whether they remain appropriate.
18. In addition to the above, the Commission expects the licensee to maintain a local presence as described in Broadcasting Regulatory Policy 2009-406.

Issues relating to priority programming

19. In Broadcasting Regulatory Policy 2009-406, the Commission has announced that it will retain the condition of licence relating to priority programming that had been imposed on conventional television stations at the time of the last licence renewal. This condition of licence requires stations to broadcast at a minimum, in each broadcast year, an average of eight hours per broadcast week of Canadian programs in the priority program categories between 7:00 p.m. and 11:00 p.m. In the same regulatory policy, the Commission stated that it had received insufficient evidence regarding the impact the removal of this condition would have. Furthermore, given that the stations concerned are receiving short-term licences, and based on the scheduling of the acquisition of programming, the Commission determined that a change to its approach with respect to priority programming is not warranted at this time.
20. However, Rogers requested the removal of three conditions of licence relating to priority programming and these requests are addressed below.

Baseline spending

21. In Broadcasting Decision 2007-360, the Commission approved the transfer of effective control of the Citytv group of stations to Rogers. As part of the transaction, Rogers committed to a tangible benefits package. Rogers also agreed to a priority programming spending baseline in order to ensure that money spent on priority programming as part of the tangible benefits package is incremental to what the licensee would normally spend on such programming. This baseline was set at \$4.1 million per year.
22. In its applications, Rogers requested authorization to redirect its baseline spending for priority programming to local programming. Rogers argued that redirecting its baseline spending to support local programming initiatives would be in line with its proposed programming strategy and its proposal to remove priority programming obligations, and would strengthen its competitive position in the markets it serves.
23. The Commission considers that the original rationale for imposing the spending baseline—that the money spent on priority programming as part of the tangible benefits package is incremental to what the licensee would normally spend on such programming—remains valid. In addition, as is noted above, the Commission is retaining the condition of licence requiring stations to broadcast a minimum number of hours of Canadian programs in the priority program categories. Given that Rogers will continue to be required to broadcast a minimum number of hours of Canadian priority programming and given that the rationale for the baseline remains valid, the Commission is of the view that the baseline spending should continue to be directed to priority programming.

Therefore, the Commission **denies** Rogers' request to redirect the baseline spending from priority programming to local programming.

Canadian feature films

24. Rogers argued that the requirement for both CITY-TV Toronto and CKVU-TV Vancouver to broadcast a minimum of 100 hours per broadcast year of Canadian long-form features during peak viewing hours and a maximum of ten hours of feature-length documentaries is no longer a viable programming strategy given that films are now widely available and offered by a number of conventional, specialty, pay and video-on-demand services. It also noted that it is the only conventional broadcaster with a specific requirement to broadcast Canadian feature films.
25. The Canadian Association of Film Distributors and Exporters urged the Commission to reject this request in light of the decline in the broadcast of Canadian films by the conventional broadcasters over the past five years.
26. The Commission received insufficient evidence regarding the impact the removal of this condition would have. Furthermore, given that the two stations concerned are receiving short-term licences, and based on the scheduling of the acquisition of programming, the Commission is of the view that the removal of this condition of licence for CITY-TV Toronto and CKVU-TV Vancouver is not warranted at this time. Accordingly, the Commission **denies** Rogers' request to remove this condition of licence.

Citytv priority programming distinct from English-language programming on OMNI stations

27. In its applications, Rogers requested the removal of the condition of licence which require that the priority programming broadcast on a Citytv television station be distinct from the English-language programming broadcast on a OMNI ethnic television station in a given market.
28. The Commission has not received sufficient evidence and satisfactory rationale in order to remove this condition of licence which is designed to encourage programming diversity. Accordingly, the Commission **denies** Rogers' request to remove this condition of licence.

Programming overlap with OMNI stations

29. In its applications, Rogers requested the removal of the conditions of licence which limit the overlap of programming between Citytv and OMNI stations. In Roger's view, the removal of these conditions of licence would maximize Citytv's programming flexibility and simplify regulatory compliance and monitoring. It added that "given the distinct nature and programming strategies of the OMNI and Citytv stations, and our proposal to remove priority programming obligations, we do not believe these limitations are relevant or necessary to ensure the local nature and focus of the Citytv stations."
30. The current conditions of licence limit Rogers, in markets containing both a Citytv and an OMNI ethnic television station, to no more than a 10% overlap in the programming broadcast on the two stations and to no overlap in the third-language ethnic programming broadcast on the Citytv and OMNI stations in a given market.

31. The Commission notes that conditions of licence such as these are generally imposed with the objective of limiting programming duplications between different entities owned by the same ownership group in order to ensure a maximum level of programming diversity in the broadcasting system.
32. The Commission is not persuaded by Rogers' rationale for the elimination of this restriction and finds that the removal of the conditions of licence is not warranted at this time. Accordingly, the Commission **denies** Rogers' request to remove the conditions of licence relating to the overlap of programming.

Logs and records

33. The Commission notes that, despite the best efforts of Commission staff and Rogers staff, Rogers has not been able resolve issues relating to the filing of its logs and records and many errors remain in the television logs filed by Rogers for all of its Citytv stations for the broadcast year 2007-2008.
34. In light of the unresolved issues, Rogers is required to file, for the upcoming year, detailed monthly programming reports in addition to submitting television logs, to assure the Commission that it is meeting its regulatory requirements. The reports should contain sufficient details, such as the titles of programs and the date and time programs are broadcast, in order to allow the Commission to evaluate the Citytv stations' compliance with all of their programming obligations, commitments and expectations. The reports must be approved by a member of Rogers' senior management. A **condition of licence** requiring Rogers to abide by the above requirement is set out in paragraph 36 of this decision. This issue will be revisited during the group-based licence renewal public hearing scheduled for the spring of 2010, at which time the monthly reporting requirement may be waived if the Commission is convinced that the television logs issue has been satisfactorily resolved.

Conclusion

35. In light of all of the above, the Commission **renews** the broadcasting licences for the television programming undertakings set out below from 1 September 2009 to 31 August 2010.

Call sign	Location	Application
CHMI-TV	Portage La Prairie/ Winnipeg, MB	2009-0037-5
CITY-TV and its transmitters	Toronto, ON	2009-0038-3
CITY-TV-2	Woodstock	
CITY-TV-3	Ottawa	
CITY-DT	Toronto, ON	2009-0208-2

CKAL-TV and its transmitter CKAL-TV-1	Calgary, AB Lethbridge, AB	2009-0039-1
CKEM-TV and its transmitter CKEM-TV-1	Edmonton, AB Red Deer, AB	2009-0041-6
CKVU-TV and its transmitter CKVU-TV-1	Vancouver, BC Courtenay, BC	2009-0042-4

36. The licence for each undertaking will be subject to the terms and **conditions** in effect under the current licence, which include the **conditions** set out in Broadcasting Decision 2007-360, as well as the **conditions of licence** set out below:

CHMI-TV Portage La Prairie/Winnipeg shall broadcast a minimum of seven hours of local programming per broadcast week.

CITY-TV and CITY-DT Toronto, CKAL-TV Calgary, CKEM-TV Edmonton, and CKVU-TV Vancouver shall broadcast a minimum of 14 hours of local programming per broadcast week.

In addition to submitting television logs, the licensee shall file detailed monthly programming reports. The reports must include the titles of programs and the date and time the programs are broadcast and must be approved by a member of Rogers' senior management.

Employment equity

37. Because Rogers is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Policy determinations resulting from the 27 April 2009 public hearing, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009*
- *Renewal of the broadcasting licences for private conventional television stations considered at the 27 April 2009 Gatineau public hearing – Initial decisions and scope of subsequent policy proceeding, Broadcasting Decision CRTC [2009-279](#), 15 May 2009*
- *Licence Renewals for Private Conventional Television Stations, Broadcasting Notice of Consultation CRTC [2009-113](#), 3 March 2009*

- *Scope of licence renewal hearings for private conventional television stations*, Broadcasting Notice of Consultation CRTC [2009-70](#), 13 February 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Transfer of effective control of 1708487 Ontario Inc., 1738700 Ontario Inc. and CHUM Television Vancouver Inc. to Rogers Media Inc.*, Broadcasting Decision CRTC [2007-360](#), 28 September 2007
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

This decision is to be appended to each 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>.