



Broadcasting Decision CRTC 2010-466

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Route reference: 2009-778

Ottawa, 9 July 2010

Rogers Broadcasting Limited Across Canada

Application 2009-1558-0, received 13 November 2009

Outdoor Life Network – Licence amendments

*The Commission **approves in part** an application by Rogers Broadcasting Limited (Rogers) to amend the broadcasting licence for the national, English-language specialty television service known as Outdoor Life Network. Specifically, the Commission **approves** Rogers' proposal to add categories 7(b) Ongoing comedy series (sitcoms), 7(e) Animated television programs and films and 7(f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy to the list of program categories that may be broadcast by the service. Further, the Commission **approves** Rogers' proposal to increase the amount of programming that may be drawn from category 7 Drama and comedy as a whole from 5% of the broadcast year to 10% of the broadcast month.*

*The Commission, however, **denies** Rogers' requests to amend the requirements that all programming drawn from category 7 be Canadian and that programming from category 6(a) Professional sports not include stick and ball sports.*

Introduction

1. The Commission received an application by Rogers Broadcasting Limited (Rogers) to amend the broadcasting licence for the national, English-language specialty television programming undertaking known as Outdoor Life Network (OLN). Specifically, Rogers proposed to:
 - add categories 7(b) Ongoing comedy series (sitcoms), 7(e) Animated television programs and films and 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy to the list of program categories that may be broadcast by the service;
 - increase the maximum percentage of programming from category 7 Drama and comedy that may be broadcast from 5% of the broadcast year to 10% of the broadcast month;
 - remove the requirement that all programming drawn from category 7 be Canadian; and

- decrease the maximum amount of programming that may be devoted to programs drawn from category 6(a) Professional sports from 15% of the broadcast day to 10% of the broadcast month. The current restriction that programming from category 6(a) shall not include stick and/or ball sports would be amended so as to allow OLN to broadcast stick and/or ball sports that are consistent with the outdoor recreation theme, such as golf, soccer and baseball.
2. Rogers submitted that the proposed amendments are consistent with the programming flexibility for specialty services announced in Broadcasting Public Notice 2008-100. It stated that approval of the application would not alter the focus of OLN and would allow Rogers to provide well-rounded programming that responds to the expectations of OLN's current audience and attract new viewers. With respect to the change to category 6(a), Rogers noted that the Commission has opened the mainstreams sports programming genre to competition.
 3. The Commission received interventions supporting and opposing the application. The interventions and Rogers' reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

4. After examining the application in light of applicable regulations and policies and taking into account the interventions and the applicant's reply to the interventions, the Commission considers that the issues to be addressed in its determinations are the following:
 - the scope of the flexibility granted under Broadcasting Public Notice 2008-100;
 - the request to add categories 7(b), (e) and (f) and increase the amount of programming drawn from category 7;
 - the request to remove the requirement that all drama be Canadian; and
 - the request to decrease the amount of programming drawn from category 6(a) and to change the restriction related to the broadcast of stick and/or ball sports.

Scope of the flexibility granted under Broadcasting Public Notice 2008-100

5. In Broadcasting Public Notice 2008-100, the Commission stated that it would simplify the regulations concerning specialty services' nature of service definitions and allowable program categories. Specifically, it stated that:

The Commission is of the view that, in most instances, the narrative descriptions of Category A services are sufficiently specific to ensure that these services remain true to the genre for which they were licensed. Therefore, the Commission determines that it will permit all Category A services to draw programming from all program categories, thereby providing these services with greater flexibility in this regard. However, to ensure that this change does not permit services to morph into other established programming genres and thus become directly competitive with other Category A services, the Commission will establish a standard limitation of 10% of the broadcast month for the following categories:

- 2(b) Long-form documentary;
- 6(a) Professional sports;
- 7 Drama and comedy;
- 7(d) Theatrical feature films aired on television;
- 7(e) Animated television programs or films; and
- 8(b) and (c) combined – Music video clips and Music video programs

Where a licensee is currently permitted to broadcast more than these standard limitations, it may continue to do so.

6. The Commission also stated that it may allow amendments to other conditions of licence where it finds that the nature of service definition is sufficient to ensure a Category A service (presently known as analog and Category 1 pay and specialty services) remains non-competitive and true to its genre.
7. In assessing this application, the Commission examined whether OLN's nature of service is sufficient to ensure the service would remain non-competitive and true to its genre, as well as whether the diversity of voices in the Canadian broadcasting system would be maintained or enhanced and the conditions of licence continue to be applied according to their original intent if the requested amendments were approved.

Request to add categories 7(b), 7(e) and 7(f) and increase the amount of programming from category 7

8. The Canadian Film and Television Production Association (CFTPA), the Writers Guild of Canada (WGC) and CTVglobemedia Inc. (CTVgm) all expressed concern about the proposed amendments related to the broadcasting of programming from category 7. The CFTPA and WGC considered that such amendments would be best considered at licence renewal time. CTVgm and WGC were concerned that some of the programming that OLN proposed to broadcast from categories 7(b), 7(e) and 7(f) would be inconsistent OLN's nature of service.
9. In Broadcasting Public Notice 2008-100, the Commission stated that it would permit services such as OLN to draw programming from all categories and that a limit of 10% of programming from category 7 would be appropriate.

10. Accordingly, the Commission **approves** Rogers' request to amend the broadcasting licence for OLN by adding categories 7(b), 7(e) and 7(f) to the list of program categories that OLN may broadcast and to change the maximum percentage of programming drawn from category 7 from 5% of the broadcast year to 10% of the broadcast month. The Commission reminds the licensee that all programming must be consistent with the condition of licence that sets out OLN's nature of service.

Request to remove the requirement that all drama be Canadian

11. The Commission notes that the original intent of allowing OLN and other lifestyle specialty services to air dramatic programming was to create space for Canadian drama within each licensee's existing nature of service. In Broadcasting Public Notice 2004-2, the Commission stated the following:

In those cases where a licensee has proposed to introduce a drama component to its programming service for the first time, the Commission has required that the additional component be in keeping with the licensee's nature of service and that it be exclusively in support of Canadian drama programming.

12. OLN's current conditions of licence require it to devote 50% of the broadcast day and 40% of the evening broadcast period to Canadian programming. If the Canadian drama requirement were removed, OLN could be in compliance with these levels even if its drama consisted entirely of non-Canadian programs. The Commission is of the view that such a scenario would not be consistent with the Commission's original objective of supporting Canadian drama through the broadcast of category 7 programming on OLN and comparable specialty services.

13. In addition, the Commission indicated in Broadcasting Public Notice 2008-100 that:

With respect to the programming obligations for pay and specialty services, the Commission considers it more appropriate to discuss these in detail at their licence renewals. This will give the licensees an opportunity to assess the impact of the new policies and regulations contained in this public notice and formulate their commitments accordingly.

14. In Broadcasting Decision 2009-569, the Commission denied a similar application by Rogers to remove the requirement that programming drawn from category 7 be Canadian. The Commission stated that OLN's Canadian drama requirement would be best examined at the upcoming group-based licence renewal hearing, when it can be considered in the context of its ownership group and other lifestyle specialty services. The Commission remains of the view set out in Broadcasting Decision 2009-569.
15. Accordingly, the Commission **denies** Rogers' request to amend the broadcasting licence for OLN by removing the requirement that all programming drawn from category 7 Drama and comedy be Canadian.

Request to decrease the amount of programming drawn from category 6(a) and to change the restriction related to the broadcast of stick and/or ball sports

16. In Broadcasting Decision 2009-569, the Commission denied a previous application by Rogers to remove the requirement that programming drawn from category 6(a) not include stick or ball sports.
17. In its intervention, Score Media Inc. referred to Broadcasting Decision 2009-569 and submitted that the Commission has already determined that stick and/or ball sports are inconsistent with OLN's nature of service. The CFTPA and CTVgm also considered that the sports programming planned by OLN may result in its deviating from its nature of service condition of licence.
18. The Commission remains of the view set out in Broadcasting Decision 2009-569 that the broadcast of professional golf, soccer and baseball would fall outside of OLN's nature of service condition of licence, which states that the service shall be devoted "exclusively to programs that deal with outdoor recreation, conservation, wilderness and adventure." The Commission notes that the current condition of licence was imposed to prevent sports programming overlap between OLN and other services owned by its shareholders. Due to the potential synergies between OLN and Sportsnet, also a Rogers service, the Commission is of the view that OLN should continue to be explicitly prohibited from broadcasting professional sports to prevent the use of OLN as a second window for Sportsnet.
19. Consistent with its finding in Broadcasting Decision 2009-569, the Commission also dismisses Rogers' argument that OLN should be granted the amendment to compete with competitive mainstream sports services as proposed in Broadcasting Public Notice 2008-100 and Broadcasting Notice of Consultation 2008-103, as OLN will continue to benefit from genre protection, while the competitive services will not. Additionally, because competitive services have higher Canadian content requirements than OLN, OLN would be at an advantage if its restrictions on professional sports were removed. Should OLN wish to compete with mainstream services, it must apply for and abide by the standard competitive conditions of licence outlined in Broadcasting Regulatory Policy 2009-562.
20. Accordingly, the Commission **denies** Rogers' request to amend the broadcasting licence for OLN by decreasing the maximum amount of programming that may be devoted to programs drawn from category 6(a) Professional sports from 15% of the broadcast day to 10% of the broadcast month and to permit the broadcast of stick and/or ball sports that are consistent with the outdoor recreation theme, such as golf, soccer and baseball.

Conclusion

21. In light of all of the above, the Commission replaces condition of licence 1 with the following **condition**:
 1. (a) The licensee shall provide a national English-language specialty television

service devoted exclusively to programs that deal with outdoor recreation, conservation, wilderness and adventure.

(b) The programming must be drawn exclusively from the following categories, as set out in section 6 of Schedule I of the *Specialty Services Regulations, 1990*, as amended from time to time:

- 2 (a) Analysis and interpretation
- (b) Long-form documentary
- 5 (b) Informal education/Recreation and leisure
- 6 (a) Professional sports
- (b) Amateur sports
- 7 Drama and comedy
 - (a) Ongoing dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy
 - (g) Other drama
- 11 General entertainment and human interest
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

(c) In each broadcast year, the licensee shall devote to programs drawn from category 6(a) not more than 15% of the broadcast day and such programming shall not include stick and/or ball sports, including hockey, baseball, football, basketball, golf, soccer, and tennis.

(d) The licensee shall devote to programs drawn from category 7 as a whole not more than 10% of the broadcast month, including no more than one feature film per broadcast week, and all such programs shall be Canadian.

Secretary General

Related documents

- *Outdoor Life Network – Licence amendments*, Broadcasting Decision CRTC 2009-569, 10 September 2009
- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news*, Broadcasting Regulatory Policy CRTC 2009-562, 4 September 2009

- *Proposed conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and mainstream national news*, Broadcasting Notice of Consultation CRTC 2008-103, 30 October 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Outdoor Life Network – Licence renewal*, Broadcasting Decision CRTC 2004-9, 21 January 2004
- *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

**This decision is to be appended to the licence.*