



## Broadcasting Decision CRTC 2010-965

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Route reference: 2010-715

Ottawa, 23 December 2010

**Bluepoint Investments Inc.**  
Province of Saskatchewan

*Application 2010-1379-7, received 17 August 2010*  
*Public Hearing in the National Capital Region*  
*26 November 2010*

### **Saskatchewan Communications Network – Acquisition of assets**

*The Commission **approves** the application by Bluepoint Investments Inc. for authority to acquire from Saskatchewan Communications Network Corporation the assets of Saskatchewan Communications Network, a satellite-to-cable programming undertaking that distributes educational programming in Saskatchewan. A new broadcasting licence will be issued subject to the terms and **conditions** set out in the appendix to this decision.*

#### **Introduction**

1. The Commission received an application by Bluepoint Investments Inc. (Bluepoint) for authority to acquire from Saskatchewan Communications Network Corporation (SCNC) the assets of Saskatchewan Communications Network (SCN), a satellite-to-cable programming undertaking that distributes educational programming in Saskatchewan, and for a new broadcasting licence to continue the operation of the undertaking.
2. SCNC is a corporation created by an act of the Legislature of the province of Saskatchewan for the purpose of disseminating educational, cultural and public information throughout the province via telephone conferencing, television and data communications, using satellite and fibre optics cable. Its mandate is to provide equal access to learning opportunities for the residents of Saskatchewan and its mission is to encourage, facilitate and coordinate the use of communications technology in Saskatchewan to enhance the development and delivery of educational information and cultural programs for the improvement of human and economic resources. SCNC is controlled by its board of directors.
3. Under the terms of a Purchase and Sale Agreement between SCNC and Bluepoint executed on 30 June 2010, Bluepoint has the responsibility and authority to operate the service under the same terms and conditions as those set out in the current licence (Broadcasting Decision 2007-61).
4. Bluepoint is a corporation wholly owned and controlled by Mr. Bruce G. Claassen.

5. As part of its application, Bluepoint proposed to amend the licence for the service by introducing advertising and new commercial content, which would be balanced with previously broadcast and familiar content genres. Specifically, the daytime period from 6 a.m. to 3 p.m. would remain dedicated to children's and educational programming, which would run commercial-free, while other periods would contain educationally and culturally themed programming as well as programming designed to attract advertising revenues. The applicant requested to be allowed to broadcast 14 minutes of advertising per hour during the 63 hours per week of proposed commercial content for a total of up to 882 advertising minutes per week.
6. The Commission received interventions supporting and commenting on the application. The Commission also received an intervention in opposition to the application. The interventions and the applicant's reply can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and determinations**

7. After examining the application in light of applicable regulations and policies and taking into account the interventions and the applicant's reply, the Commission has determined that the following issues should be considered:
  - the benefits test;
  - educational and commercial programming;
  - the broadcast of advertising;
  - the reflection of ethnic, Native and official language minority communities; and
  - accessibility requirements.

#### **The benefits test**

8. In Public Notice 1989-109, the Commission established that the purpose of the benefits policy is to allow the market to govern the transfer of broadcasting licences as part of ownership transactions while recognizing that broadcasting licences are public property. The purpose is also to ensure that the applicant has filed the best overall proposal under the circumstances given the absence of a public call for competing applications. The Commission determined that the benefits to the broadcasting system should be commensurate with the size and nature of the transaction and set the value of the tangible benefits at 10% of the value of the transaction.
9. In Public Notice 1993-68, the Commission determined that intangible benefits, such as the experience and resources of the purchaser, local ownership, the entry of new players and the promise to maintain or improve a struggling service, may be as significant as tangible benefits. The Commission stated that it would maintain its case-by-case approach, assessing each application on its merits and taking into account both the tangible and intangible benefits proposed. The Commission added that it might accept a package consisting solely of intangible benefits where the

survival of the service is at stake and in cases that meet other criteria set out in the notice.

10. In this case, the applicant submitted that beyond the continuation of an educational service in Saskatchewan, its proposal included benefits in the form of meaningful commitments to independent Saskatchewan production and digital initiatives in the province amounting to \$19.25 million over seven years.
11. The Commission considers that the survival of the service is at stake. More specifically, the Commission notes that should the transaction be denied, SCN would cease operation as Bluepoint was the only bidder that did not require further government spending. The Commission also notes that the commitments proposed by Bluepoint received broad support from interveners. Finally, the Commission considers that this transaction is in the public interest and will benefit the broadcasting system. In light of the foregoing, the Commission does not require the applicant to offer a tangible benefits package for this transaction. However, the Commission accepts the commitments proposed by the applicant as intangible benefits, consistent with Public Notice 1993-68.
12. Accordingly, the Commission expects the applicant to fulfill its commitments to spend \$1.75 million per year on independent Saskatchewan production and \$1 million per year on digital production in Saskatchewan over the next seven years. The Commission also requires Bluepoint to report annually on its progress in fulfilling its commitments. A **condition of licence** to this effect is set out in the appendix to this decision.

#### **Educational and commercial programming**

13. In its application, Bluepoint stated that it would continue to be the designated educational broadcaster for Saskatchewan. It also proposed to incorporate commercial programming to ensure the viability of the service by replacing government funding with advertising revenues.
14. The applicant stated that it would accept a condition of licence requiring it to devote 60% of the broadcast year to educational programming, of which a minimum of 40% would be drawn from categories 5(a) Formal education and pre-school and 5(b) Informal education/Recreation and leisure.
15. The Commission has traditionally been concerned that permitting the solicitation of advertising by educational broadcasters could influence their programming decisions so that they favor commercially popular programming at the expense of educational programs. Accordingly, to ensure that the service does not deviate from its educational mandate, the Commission is imposing a **condition of licence** relating to the designation of the service as the provincial educational broadcaster for Saskatchewan and as a “provincial authority” within the meaning of the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, SOR/85-627.

16. Furthermore, the Commission considers that the level of educational programming proposed by the applicant is insufficient to maintain the mandate of an educational service. Accordingly, the Commission is imposing a **condition of licence** requiring the licensee to devote no less than 60% of the broadcast month, rather than the broadcast year, to the broadcast of programming from categories 2(a) Analysis and interpretation, 2(b) Long-form documentary, 5(a) Formal education and pre-school and 5(b) Informal education/Recreation and leisure. A minimum of 40% of this programming must be drawn from categories 5(a) and 5(b) and must be devoted to educational programming directed to pre-school children or to educational programming with clear learning objectives and comprising part of a formal learning system that leads to formal assessment and accreditation by an educational institution.
17. As noted above, Bluepoint also proposed that 50% of the broadcast week include commercial-free educational programming, most of which would be aired during the daytime period, and indicated its commitment not to broadcast any advertising material during programming directed to persons under 12 years. The Commission has imposed **conditions of licence** to this effect.
18. With regard to programming drawn from category 7 Drama and comedy, the applicant stated that it would not accept to be bound by a condition of licence requiring that all category 7 programming be educational programming. It argued that such a condition of licence would be contrary to the strategy developed to ensure the ongoing viability of SCN as an educational service based on the sale of commercial advertising primarily in the evening broadcast period. It also suggested that such a restriction would make it impossible for it to air Canadian category 7 programming on SCN and to participate in any larger Canadian category 7 original productions. However, Bluepoint indicated that like ACCESS it would work closely with educational institutions in the province to ensure that dramatic and other programming remains relevant and connected to educational opportunities within the educational system in Saskatchewan.
19. Consistent with the applicant's commitment, the Commission expects Bluepoint to work closely with educational institutions in the province to ensure that programming drawn from category 7 remains relevant and connected to educational opportunities within the educational system in Saskatchewan. The Commission is also requiring Bluepoint to file an annual report describing its efforts in this regard. A **condition of licence** to this effect is set out in the appendix to this decision.

#### **Broadcast of advertising**

20. As noted above, Bluepoint requested to be allowed to broadcast 14 minutes of advertising per hour during the 63 hours per week of proposed commercial content for a total of up to 882 advertising minutes per week. Bluepoint did not propose to broadcast advertising during the daytime viewing period from 6 a.m. to 3 p.m, which will be dedicated to educational programming.

21. In its application, Bluepoint further indicated that it intended to solicit regional and national advertising that would be primarily directed to Regina and Saskatoon and that it had no intention of soliciting local advertising given that it did not propose to provide local programming.
22. The Commission recognizes the impact of Bluepoint's ability to solicit regional and national advertising on the overall viability of its proposed business plan and the fact that under the terms of the Purchase and Sale Agreement, SCN will receive no financial support, aside from potential advertising revenues, from the government of Saskatchewan. As such, the Commission acknowledges that Bluepoint will need to depend on alternative sources of revenue such as advertising to subsidize its significant commitment to educational programming.
23. Although the Commission recognizes the potential impact of approving the applicant's request on existing conventional television stations, and in particular those serving the Regina and Saskatoon markets, it is nonetheless of the view that the impact on such services will be significantly mitigated by the fact that Bluepoint will be unable to solicit local advertising as it did not propose to provide local programming. In this respect, the Commission reiterates that its long-standing policy is to prohibit access to a local television advertising market unless the broadcaster provides a local programming service to that market.
24. The Commission notes that as a result of the above policy, Bluepoint will be highly dependent on the sale of regional and national advertising<sup>1</sup> to ensure the viability of its business plan. The Commission nonetheless considers that the potential impact on existing broadcasters of SCN's solicitation of regional and national advertising will be largely mitigated by SCN's commitment to dedicate 50% of the broadcast week to commercial-free educational programming, as well as by its much smaller overall footprint relative to other broadcasters.
25. Additionally, the Commission considers that Bluepoint's access to popular prime time programming may be limited by the fact that as an independent broadcaster it will likely have to acquire such programming from larger broadcasters, who usually hold the rights to such programming.
26. Accordingly, the Commission considers that it would be appropriate to approve Bluepoint's request to be allowed to broadcast 14 minutes of advertising per hour during the 63 hours per week when it will broadcast commercial content. The Commission has set out a **condition of licence** to this effect in the appendix to this decision.

#### **Reflection of ethnic, Native and official language minority communities**

27. It is estimated that the French-language minority represents 1.6% of the population of Saskatchewan or approximately 15,000 persons. Although SCN offers programming

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<sup>1</sup> The Commission defines the sale of regional and national advertising as the sale of advertising to persons who provide goods or services in more than one market and/or province.

in English, it has historically ensured that an important aspect of its mandate would be to provide adequate community reflection through programming depicting the mosaic of Saskatchewan peoples.

28. When asked whether it intended to call on producers from Francophone minorities, the applicant stated that SCN under Bluepoint ownership would continue its present policy of considering proposals in any language for broadcast. Accordingly, in keeping with the mandate proposed by the applicant for this educational programming service, the Commission encourages Bluepoint to continue to consider proposals in any language for broadcast, including programming proposals that reflect the realities and celebrate the culture and heritage of Native, Francophone and ethnic communities in the province.

#### **Accessibility requirements**

29. Consistent with Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the appendix to this document sets out the licensee's obligations with respect to service to persons with hearing and visual impairments, with the exceptions discussed below.
30. With respect to closed captioning, the Commission notes that the applicant committed to caption 100% of its programming broadcast between 7 p.m. and 11 p.m. by the end of its first year of operation and 100% of all programs broadcast over the broadcast day by 1 September 2013, consistent with Broadcasting Public Notice 2007-54. Given the licensee's plan to transition SCN to a combined commercial/non-commercial service, the Commission finds the proposal appropriate and has set out a **condition of licence** to that effect in the appendix to this decision.
31. Bluepoint indicated that SCN was not technically capable of providing described video at this time. The applicant noted that it would be in a position to better assess and comment on the ability of SCN to provide described video content and within what time frame following approval of the proposed transaction. In recognition of this, the Commission will not impose a described video requirement to take effect immediately. Instead, to provide Bluepoint with sufficient time to become technically capable of providing described video, Bluepoint will be required to provide four hours per week of described video no later than four years from the date of this decision, consistent with the Accessibility Policy. A **condition of licence** to this effect is set out in the appendix to this decision.
32. Finally, in its Accessibility Policy, the Commission established that broadcasters must provide audio description for all key visual elements of Canadian information programs, including news programming (that is, the voice-over of key textual, graphic design and still-image elements, such as phone numbers, stock information or weather maps that are posted on the screen). The Commission has set out a **condition of licence** to this effect in the appendix to this decision. The Commission also notes that Bluepoint has committed to ensuring that its production agreements for information programming containing onscreen graphics will include a requirement that such graphics be accompanied by appropriate audio description.

## Conclusion

33. The Commission notes that Bluepoint is seeking flexibility to manage SCN due to exceptional circumstances and recognizes that the survival of SCN is at stake and that SCN would cease operation without approval of the transaction. Given that Bluepoint is an independent broadcaster that cannot benefit from the synergies available to large integrated corporate groups, the Commission is satisfied that the requested flexibility in the commitments and conditions of licence will be in the public interest and will help preserve the diversity of programming choices in Saskatchewan as the communities will continue to have access to the service.
34. In light of the above, the Commission **approves** the application by Bluepoint Investments Inc. for authority to acquire the assets of the satellite-to-cable programming undertaking Saskatchewan Communications Network.
35. Given the pace of change in the broadcasting environment, the Commission announced its intention in Broadcasting Regulatory Policy 2010-167 to impose five- rather than seven-year licence terms for licences controlled by designated groups. It is the Commission's view that this approach is equally relevant to this educational service. Accordingly, the licence term for the service will be five years. Upon surrender of the current licence issued to SCN, a new broadcasting licence will be issued subject to the terms and **conditions** set out in the appendix to this decision.

Secretary General

### Related documents

- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Accessibility of telecommunications broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Saskatchewan Communications Network Corporation – Licence renewal*, Broadcasting Decision CRTC 2007-61, 13 February 2007
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

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

## Appendix to Broadcasting Decision CRTC 2010-965

### Terms, conditions of licence, expectations and encouragements

#### Terms

The licence shall expire 31 August 2015.

#### Conditions of licence

1. The licensee shall adhere to the requirements of the *Television Broadcasting Regulations, 1987*.
2. The licensee shall maintain throughout the licence term the service's designations as the provincial educational broadcaster for Saskatchewan and as a "provincial authority" within the meaning of *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, SOR/85-627.
3. The licensee shall devote no less than 60% of the broadcast month to the broadcast of programming drawn from categories 2(a) Analysis and interpretation, 2(b) Long-form documentary, 5(a) Formal education and pre-school and 5(b) Informal education/Recreation and leisure. A minimum of 40% of this programming must be drawn from categories 5(a) and 5(b) and must be devoted to educational programming directed to pre-school children or to educational programming with clear learning objectives and comprising part of a formal learning system that leads to formal assessment and accreditation by an educational institution.
4. The licensee shall devote no less than 50% of the broadcast week to commercial-free educational programming, most of which shall be aired during the daytime period from 6 a.m. to 3 p.m.
5. Where it broadcasts commercial programming, the licensee shall not broadcast more than 14 minutes of national or regional advertising material in any clock hour in a broadcast day or more than 882 minutes of advertising material in a broadcast week.
6. The licensee shall not broadcast any advertising material during programming directed to persons under 12 years of age.
7. The licensee shall file an annual report describing the service's efforts to connect programming drawn from category 7 Drama and comedy to learning opportunities made available by educators in Saskatchewan.
8. The licensee shall report annually on its progress in fulfilling its commitments to spend \$1.75 million per year on independent Saskatchewan production and \$1 million per year on digital production in Saskatchewan over the next seven years.

9. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission.
10. The licensee shall adhere to the Canadian Association of Broadcasters' *CAB Violence Code*, as amended from time to time and approved by the Commission.
11. The licensee shall close caption 100% of all programs broadcast between 7 p.m. and 11 p.m. by the end of the first year of its licence term and 100% of all programs broadcast over the broadcast day by 1 September 2013, consistent with *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
12. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, as amended from time to time and approved by the Commission.
13. The licensee shall ensure that advertising, sponsorship messages and promos are captioned by no later than the fourth year of the licence term.
14. The licensee shall have a monitoring system in place to ensure that for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches, in its original form, the distributor of that signal and, in the case of an over-the-air signal, the viewer. "Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor and the viewer unaltered, whether it is passed through in analog or in digital, including in high definition.
15. The licensee shall provide 4 hours of described video per week by no later than 4 years from the date of this decision. To fulfill this condition, the described programming may be drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety and 11 General entertainment and human interest or may consist of programming targeting children drawn from any program category.
16. The licensee shall provide audio description for all the key visual elements of Canadian information programs, including news programming. For the purposes of this condition of licence, "audio description" refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.

## **Expectations**

The Commission expects the licensee to fulfill its commitments to spend \$1.75 million per year on independent production and \$1 million per year on digital production in Saskatchewan over the next seven years.

The Commission expects the licensee to work closely with educational institutions in the province to ensure that programming drawn from category 7 Drama and comedy remains relevant and connected to educational opportunities within the educational system in Saskatchewan.

When captions are available, the Commission expects the licensee to provide viewers with a captioned version of all programming aired during the overnight period.

Once the licensee is technically capable of providing described video, the Commission expects the licensee to:

- display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
- make information available regarding the described programs that it will broadcast.

### **Encouragements**

The Commission encourages the licensee to continue to consider proposals in any language for broadcast, including programming proposals that reflect the realities and celebrate the culture and heritage of Native, Francophone and ethnic communities in the province.

Once the licensee is technically capable of providing described video, the Commission encourages the licensee to display the standard described video logo and air the audio announcement indicating the presence of described video following each commercial break.