



Broadcasting Decision CRTC 2006-620

Ottawa, 9 November 2006

The Sports Network Inc. Across Canada

*Application 2006-0694-9
Broadcasting Public Notice CRTC 2006-79
22 June 2006*

Multiple feeds approved

*In this decision, the Commission **approves** an application by The Sports Network Inc. to amend the broadcasting licence for the English-language specialty programming undertaking known as TSN, in order to permit the delivery of multiple feeds of its existing programming service to individual broadcasting distribution undertakings on a digital-only basis.*

Background

1. In *Complaint by the Canadian Broadcasting Corporation concerning the simultaneous distribution of multiple feeds of The Sports Network*, Broadcasting Decision CRTC 2006-197, 23 May 2006 (Decision 2006-197), the Commission determined that The Sports Network Inc. (TSN Inc.) required explicit authorization to permit separate feeds of The Sports Network (TSN) to be distributed simultaneously by broadcasting distribution undertakings (BDUs).
2. In Decision 2006-197, the Commission indicated that it was prepared to consider an application from TSN Inc. to authorize the simultaneous distribution by BDUs of separate feeds of TSN, in a single region, on a digital-only basis.
3. The present application was filed pursuant to Decision 2006-197.

The application

4. The Commission received an application by TSN Inc. to amend the broadcasting licence of the national, English-language specialty programming undertaking known as TSN, by amending condition 1(d) of its licence which reads:

(d) The licensee may distribute separate regional programming in place of its national service to affiliated distribution undertakings provided that the hours devoted to such regional programming do not exceed 10% of the licensee's quarterly program schedule.

by adding the following:

The licensee may also distribute such multiple feeds of its service in a single region on a digital-only basis.

5. TSN Inc. indicated that approval of its application would allow Canadian viewers to access sports programming that would not otherwise be available in Canada, and avoid the possibility of viewers seeking grey- or black-market means to access this programming. The licensee also stated that the authority sought would allow viewers to continue to enjoy the programming diversity they have come to expect in the digital distribution environment.

Interventions

Interventions in support

6. The Commission received four interventions in support of this application, from the Canadian Curling Association, the Vancouver Canucks, Hockey Canada and the National Hockey League. All of the supporting interveners were of the view that allowing multiple feeds of TSN's programming would offer added choice and diversity to viewers of sports programming.

Interventions in conditional support

7. Rogers Cable Communications Inc. (RCCI) indicated that it could support TSN Inc.'s application if some clarifications or changes were made. It requested that the number of TSN feeds to be distributed be limited to two: one national and one regional feed.
8. RCCI also stated that TSN Inc. had not specified whether BDUs would be required to distribute the additional TSN feeds to their customers. RCCI requested that, if the Commission approved this application, it should clarify that the requirements for BDUs to carry all English-language specialty services, as set out in paragraph 18(5)(a)(i) of the *Broadcasting Distribution Regulations*, would apply only to the existing national TSN feed, and not to any additional feeds.
9. Further, RCCI submitted that, due to the capacity challenges faced by cable BDUs, they should not be required to dedicate a full-time channel to the distribution of a second TSN feed, where no more than 10% of the programming on that feed would differ from what is offered on TSN's national feed, calculated quarterly.
10. RCCI also suggested that any carriage of the second TSN feed should be subject only to requirements agreed to under a commercial agreement between TSN Inc. and individual BDUs, and requested that, if this application were approved, the Commission indicate that such approval must not be a factor in any wholesale fee increase that TSN Inc. might subsequently seek.

11. Rogers Sportsnet Inc. (Rogers), licensee of Rogers Sportsnet (Sportsnet), a national sports specialty service, also offered conditional support for TSN Inc.'s application, provided that the Commission reiterate and reinforce the restriction in TSN's licence which specifically precludes the broadcast of any advertising other than paid national advertising.
12. Rogers indicated that TSN's original authority to provide a limited regional feed was designed to address blackout restrictions, but that TSN Inc. has used the authority to purchase regional sports properties and has now become a national service which carries both national and regional sports programming.
13. Rogers acknowledged that Sportsnet, although complementary to TSN, often competes directly with it for programming acquisition and subscription/advertising revenues. Rogers expressed the concern that if the present application were to be approved, the current competitive balance between Sportsnet and TSN would shift drastically in favour of TSN. Rogers indicated that TSN currently has an advantage in terms of subscriber revenue since its regulated wholesale rate on basic cable is higher than that of Sportsnet. On the other hand, TSN is precluded from broadcasting any advertising other than paid national advertising, while Sportsnet may solicit both regional and national advertising. Rogers was of the view that, if TSN were also allowed to solicit regional advertising, it would gain a significant competitive advantage over Sportsnet.

Interventions in opposition

14. CanWest MediaWorks Inc.'s (CanWest's) opposition was based on its contention that there was not enough information available to adequately assess the impact of TSN Inc.'s application on the Canadian broadcasting system. The intervener stated that the present application did not clarify what type of programming would be multiplexed, the number of feeds it would deliver, or whether there would be separate advertising on each feed.
15. Further, CanWest indicated that the applicant has numerous other sports-related programming services on which to place additional programming, and that multiplexing is only one way of increasing choice for viewers.
16. Finally, CanWest requested that, if the Commission were to approve this application, such approval should be explicitly limited to live sporting events on specialty sports services.
17. The Canadian Broadcasting Corporation's (CBC's) opposition to this application was based on its view that TSN Inc.'s proposal was ambiguous and that its impact could not therefore be fully assessed.
18. The CBC requested that the Commission clarify with the applicant the following issues:
 - How many TSN feeds would be delivered,
 - How the proposed 10% quarterly limit would be calculated,

- How any additional national feeds could be consistent with the existing condition of TSN's licence which limits any additional feed to regional programming,
 - What is meant by a "single region" in the proposed condition of licence,
 - What type of programming would be multiplexed, and
 - On what basis the applicant would sell advertising on multiplexed feeds.
19. Based on these ambiguities, the CBC was of the view that TSN Inc. had not provided sufficient justification for approval of this application. Furthermore, the CBC expressed the concern that approval would serve no policy objective, would provide an inappropriate advantage to Bell Globemedia Inc. (BGM), the ultimate parent corporation of TSN Inc., and would result in the inflation of the cost of broadcasting rights for sporting events.
20. The CBC further noted that the original authority to provide a limited amount (10%) of regional programming on TSN was for use in limited and exceptional circumstances, such as blackout restrictions, and was limited to ensure that there would be no significant impact on the advertising revenues of existing services.

Applicant's replies

21. TSN Inc. replied to the interventions submitted by RCCI, Rogers, CanWest, and the CBC.
22. In regard to RCCI's concern with the number of split feeds to be made available, the applicant indicated that its proposal was to simultaneously deliver no more than two feeds to BDUs. With respect to RCCI's concerns with mandatory carriage, TSN Inc. stated that it did not seek mandatory distribution for its second feed. It indicated further that all terms and conditions of distribution of the second feed would be subject to negotiation between the parties. TSN Inc. also indicated that the programming on the second feed would be subject to TSN's existing conditions of licence, including the requirement that programming on the second feed would not exceed 10% of TSN's quarterly program schedule.
23. With respect to the issue of advertising raised in Rogers' intervention, TSN Inc. confirmed that all programming available on its split feed would continue to be subject to its existing conditions of licence, including the restriction that all advertising carried would be paid national advertising.
24. In reply to CanWest's suggestion that multiplexed programming should be restricted to live sporting events, the applicant indicated that such a limitation would be inappropriate, since TSN's existing split feed authority is not limited in that manner, and that it would be counter-productive to the Commission's mandate to ensure the maximum amount of consumer choice in the digital environment. TSN Inc. further noted that none of Sportsnet's four regional feeds are subject to a requirement that the programming consist of live sporting events, and that it would be inappropriate to treat TSN differently.

25. In response to the CBC's concern that the definition of "single region" was unclear, TSN Inc. stated that "single region" would refer to a particular BDU's authorized service area.
26. With respect to the CBC's statement that TSN's original authority to broadcast split feeds was intended to address blackout restrictions, TSN Inc. noted that the existing condition of TSN's licence related to split feeds is not restricted to programming subject to blackout restrictions.
27. In terms of approval of this application conferring an advantage to BGM and its subsidiaries, TSN Inc. submitted that the CBC had failed to note that the eight other services it argued were alternative platforms for sports programming have obvious limitations: BGM has no control over the programming of Raptors TV or Leafs TV; ESPN Classic is not permitted to broadcast live sports; WTSN has ceased operations; the NHL Network is limited to broadcasting live NHL games comprising no more than 5% of the broadcast year; the Outdoor Life Network is prohibited from broadcasting hockey games; and RDS, RDS Info Sports and Le Réseau Grand Air are all French-language specialty services. Further, RDS Info Sports may devote no more than 15% of each broadcast week to live sports, and Le Réseau Grand Air is limited to amateur sports.

Commission's analysis

28. In its consideration of this application, the Commission has considered carefully the views of the applicant, the concerns expressed by all of the interveners, as well as the applicant's replies to the interventions.

TSN's existing split feed authority

29. In order to accurately assess the impact of approval of TSN Inc.'s proposal, the breadth of TSN's current split feed authority must be clarified.
30. Both Rogers and the CBC argued that TSN's existing split feed authority was granted to allow the service to deal with blackout restrictions imposed by professional sports leagues and thus, should only be used in certain limited and exceptional circumstances. At the same time, TSN Inc. notes that its existing condition of licence is not limited to programming subject to blackout restrictions.
31. The existing split feed authority was granted to TSN in *A. Gordon Craig, on behalf of The Sports Network Inc., Le Réseau des sports (RDS) Inc., 2953285 Canada Inc., and Labatt Communications Inc.*, Decision CRTC 96-75, 6 March 1996. The authority was granted in order to allow TSN to adjust its schedule to address blackout restrictions imposed by professional sports leagues. In that decision, the Commission stated:

... in limited and exceptional circumstances, namely as a result of blackout restrictions imposed by professional leagues with respect to live sporting events, TSN may provide substituted programming for distribution, at that time, in the relevant geographic area which is subject to the blackout restriction. The Commission notes that the licensee has indicated that the national advertising forming part of both the original and substituted programming would be identical.

32. Subsequently, TSN Inc. requested an amendment to TSN's licence, which would provide for more flexibility in the use of the split feed. In *Licence amendments for TSN*, Decision CRTC 97-290, 3 July 1997 (Decision 97-290), the Commission approved TSN Inc.'s application. In Decision 97-290, the Commission acknowledged the limitations proposed by TSN that a split feed would be provided only "on occasion", that it would be limited to two feeds, and that it would only apply to programming for which TSN owned national broadcast rights. However, no specific reference to blackout restrictions is contained in Decision 97-290.

33. Further, the Commission notes that, as part of the public process related to Decision 97-290, TSN Inc. stated the following:

The proposed limitation to 10% of the TSN schedule was made to alleviate the issues raised by conventional broadcasters and CTV Sports Net in their interventions, by defining a precise restriction on the Network. TSN has never envisaged that more than a limited amount of split feed programming would be undertaken, as we stated in our application, and these occasions would only apply to national rights properties owned by the Network...

34. In addition, with respect to the type of programming to be broadcast on such a split feed, TSN Inc. stated the following:

...the 10% level is merely a maximum and TSN does not translate that level to mean 876 hours per year, nor 2.4 hours of prime time programming per day. Because only live, national events that come into scheduling conflict would be possible options for split feeds, the Network could not realistically ever reach those daily or hourly levels. The rest of TSN's programming, such as news and first-run packaged programming, would not be applicable. Furthermore, the existing schedule of national sports programming to be broadcast to our subscribers and the cost of delivering two feeds would restrict the occasions when TSN could undertake to split the Network...

35. Finally, with respect to regional programming, TSN Inc. stated:

In no way would the approval of limited split feed programming for TSN make it a regional service nor a vehicle to compete with regional or local broadcasters in the acquisition of regional or local program rights...

36. The Commission notes that any authority conferred by it is based on the particulars contained in the approved application and the licence itself. In the Commission's view, TSN Inc. was clear regarding the scope and limits of its proposed split feed authority, and the application was approved on the basis of those commitments.
37. Therefore, the current authority for TSN Inc. to provide split feeds of TSN, as set out in Decision 97-290, is as follows:
- TSN may distribute separate regional programming in place of its national service to affiliated BDUs;
 - Such programming may not exceed 10% of TSN's quarterly program schedule; and
 - The circumstances in which a split feed is employed will apply to national rights properties owned by TSN and, for greater clarity, will apply only to live, national events.

Simultaneous distribution of multiple feeds on a digital-only basis

38. In the present application, TSN Inc. is seeking the ability to provide the second feed of TSN's programming, in place of TSN's national signal, on a second, separate channel on a digital-only basis.
39. If this application were approved, TSN would be able to provide, on a separate national channel, 218 hours in each quarterly schedule, over and above what is aired on the primary national TSN feed. This would represent approximately 2.4 hours of programming per day, giving the service the flexibility to air nationally one additional live sporting event such as an NHL hockey game each night of the week. Alternatively, TSN Inc. could use the proposed flexibility to simultaneously distribute additional programming during specific periods, such as championship sports events.
40. While the Commission has considered the possibility that TSN Inc. could use the additional flexibility to outbid other licensees for the rights to high profile sports events, it notes that the amount of unique programming on TSN's second feed would be limited to 10% of its quarterly schedule, thereby minimizing any negative impact on the competition for sports programming rights.

Restriction of split feed to live sporting events

41. In its intervention, CanWest requested that the Commission reiterate the restriction to "live sporting events" on TSN's split feed. TSN Inc. indicated that such a restriction would be inappropriate, counter-productive to the goal of increased consumer choice and not consistent with the treatment of Sportsnet.

42. The Commission notes that in its 1996 application, approved in Decision 97-290, TSN Inc. stated that “only live, national events that come into scheduling conflict would be possible options for split feeds” and that “the rest of TSN’s programming, such as news and first-run packaged programming, would not be applicable”. The Commission further notes that, in the present proceeding, TSN has not requested the removal of this commitment.

Commission’s determination

43. The Commission considers that any potential negative impact of approval of this application upon the competition for the rights to sports programming must be balanced against the advantages of approving it. The Commission is of the view that approval would provide viewers with more sports viewing choice and diversity, and could also help encourage the transition to digital because the second feed would be available on digital only. The Commission is also mindful that approval of this application would result in TSN being treated in a similar manner as Sportsnet.
44. For all of the reasons set out above, the Commission **approves** the application by The Sports Network Inc. to amend the broadcasting licence of the national, English-language specialty programming undertaking known as The Sports Network, by amending condition 1(d) of its licence which reads:

(d) The licensee may distribute separate regional programming in place of its national service to affiliated distribution undertakings provided that the hours devoted to such regional programming do not exceed 10% of the licensee’s quarterly program schedule.

by adding the following:

The licensee may also distribute such multiple feeds of its service in a single region on a digital-only basis.

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>