Broadcasting Decision CRTC 2008-138

Ottawa, 7 July 2008

Rogers Broadcasting Limited, on behalf of 1163031 Ontario Inc.
Across Canada

Application 2007-1865-3, received 17 December 2007
Broadcasting Public Notice CRTC 2008-27
8 April 2008

Change in effective control

The Commission ***approves****, subject to the fulfilment of a* ***condition of approval****, an application by Rogers Broadcasting Limited, on behalf of 1163031 Ontario Inc. (1163031 Ontario), for authority to effect a change in the effective control of 1163031 Ontario.*

The application

1. The Commission received an application by Rogers Broadcasting Limited (Rogers), on behalf of 1163031 Ontario Inc. (1163031 Ontario), for authority pursuant to section 10(4)(a) of the *Specialty Services Regulations, 1990* (the Regulations) to effect a change in the effective control of 1163031 Ontario. 1163031 Ontario is the licensee of the English-language specialty television programming undertaking known as Outdoor Life Network (OLN).

2. Currently, 1163031 Ontario is wholly-owned by 1163030 Ontario Inc. (1163030 Ontario) (the parent corporation), which in turn is owned by Rogers (33.33%), CTV Inc. (CTV) (33.34%) and Versus, L.P. (Versus) (formerly Outdoor Life Network, L.L.C.[1]), a non-Canadian entity (33.33%).

3. 1163031 Ontario is jointly controlled by CTV and Rogers pursuant to a Voting Trust Agreement dated 26 September 2007, in which the parties agreed to vote their shares jointly as one voting unit. In addition, CTV assumed responsibility for day-to-day operations.

[1] Outdoor Life Network, L.L.C., a limited liability company, was converted to Versus, L.P., a limited partnership, pursuant to section 17-217 of the Delaware Revised Uniformed Partnership Act on 9 August 2007.

4. The transaction would be effected through the transfer of all the issued and outstanding shares currently held by CTV and Versus in the capital of 1163030 Ontario, to Rogers. As a result, effective control of 1163031 Ontario would be exercised by Rogers, a corporation ultimately controlled by Edward S. Rogers.

5. The Commission received an intervention providing general comments from the Canadian Film and Television Production Association (CFTPA). The intervention and the applicant's reply can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis

6. After examining the application and the intervention by the CFTPA, the Commission finds that the issues to be determined relate to the value of the transaction, the incrementality of tangible benefits, priority programming and programming overlap.

Value of the transaction

7. Based on the terms of the Share Transfer Agreement dated 16 November 2007, the Commission determines that the value of the transaction, which amounts to $38,805,000, is satisfactory and acceptable for the purpose of calculating the tangible benefits package. Pursuant to the Commission's Tangible Benefits Policy,[2] Rogers proposed a tangible benefits package totalling $3,880,500, representing a financial contribution of 10% of the value of the transaction, and indicated that 100% of the proposed tangible benefits would be directed to the independent production of Canadian programming initiatives through the creation of a self-administered independent production initiative to be known as the OLN Production Initiative.

Incrementality of tangible benefits

8. Rogers indicated that the spending within the framework of the proposed OLN Production Initiative would be incremental to, i.e., over and above, the existing Canadian program expenditures (CPE) requirements for OLN, and that it would accept a condition of licence to that effect. Furthermore, Rogers confirmed that none of the proposed tangible benefits funding would be used for costs related to administrative or non-production expenses and activities, and committed to file annual reports with the Commission detailing all expenditures from this initiative and the incremental nature of the proposed funding.

---

[2] Set out in *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999.

9. The Commission directs Rogers, as a **condition of approval**, to file with the Commission, within 30 days of the date of this decision, an application to amend the condition of licence relating to CPE for the specialty television programming undertaking OLN so as to ensure that tangible benefits expenditures are incremental to the CPE requirement placed on this service.

10. The Commission is satisfied overall that the commitments that Rogers has made in regard to incrementality on OLN will ensure that the proposed tangible benefits package would be incremental in nature. However, in order to enhance the transparency of this transaction, and as a complement to the annual reports, the Commission is directing Rogers to clearly identify, in its annual returns, the annual expenditures associated with the tangible benefits.

Priority programming

11. In its intervention, the CFTPA stated that all of the programming resulting from the tangible benefits should receive a first window on OLN and that this programming should not be counted towards the priority programming obligation of CityTV and OMNI. In its reply, Rogers concurred with the position expressed by the CFTPA, stating that the programming produced as a result of the tangible benefits would first and foremost reflect OLN's unique and successful brand of Canadian programming. Rogers also committed to ensure that the programs resulting from the tangible benefits would not be used to fulfil the incremental programming obligations of the CityTV and OMNI stations. The Commission expects Rogers to abide by this commitment.

Programming overlap

12. In its intervention, the CFTPA also expressed concerns related to programming overlap. In the Commission's view, it is not necessary in the present case to limit the overall amount of programming overlap that may occur between OLN and Rogers' CityTV and OMNI stations. However, the Commission reminds Rogers that the programming broadcast on OLN must be consistent with the service's condition of licence relating to its nature of service.

Determinations

13. Based on all of the above, the Commission **approves**, subject to the fulfillment of the **condition of approval** set out above, the application by Rogers Broadcasting Limited, on behalf of 1163031 Ontario Inc., for authority pursuant to section 10(4)(a) of the Regulations to effect a change in the effective control of 1163031 Ontario.

14. The Commission notes that the Share Transfer Agreement dated 16 November 2007 contains a provision that could trigger a future adjustment to the value of this transaction. Specifically, it provides for additional consideration, over and above the $38,805,000, that will have to be paid by Rogers to Versus if, within the two-year period following the closing date of the transaction, OLN is sold or there is a change in its effective control. Should this become the case, the Commission will expect the new purchaser or controlling party to assume the benefits resulting from the additional consideration as being the benefits left to be paid from the previous transaction (unfulfilled benefits).

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.