Broadcasting Decision CRTC 2018-230

PDF version

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Ottawa, 9 July 2018

Wow! Unlimited Networks Inc.
Across Canada

Public record for this application: 2017-1027-8
Public hearing in the National Capital Region
31 May 2018

Comedy Gold – Acquisition of assets

The Commission ***approves*** *an application by WOW! Unlimited Networks Inc. (WOW Networks) for authority to acquire from Bell Media Inc. the assets of the national, English-language discretionary service Comedy Gold and for a new broadcasting licence to continue the operation of the service.*

The Commission considers that the transaction is in the public interest and will increase the variety of children's and youth programming available to Canadians.

As a result of the tangible benefits arising from this transaction, WOW Networks will invest $687,000 on initiatives that will benefit the Canadian broadcasting system.

Application

1. WOW! Unlimited Networks Inc. (WOW Networks) filed an application for authority to acquire from Bell Media Inc. (Bell Media) the assets of the national, English-language discretionary service Comedy Gold and for a new broadcasting licence to continue the operation of the service as a rebranded service dedicated to children's and youth programming.

2. WOW Networks is a wholly owned subsidiary of WOW Unlimited Media Inc. (WOW Media), a widely held public corporation effectively controlled by its board of directors.

3. Bell Media is a wholly owned subsidiary of Bell Canada, which is effectively controlled by BCE Inc., a widely held public corporation controlled by its board of directors.

4. WOW Networks would acquire the assets of Comedy Gold for $6.8 million. It proposed a value of the transaction of $6,866,892 and a tangible benefits package of $687,000, which represents a contribution of 10% of the value of the transaction.

5. Following the close of the transaction, WOW Networks would become the licensee of Comedy Gold.

6. Comedy Gold is currently subject to the conditions of licence applicable to Bell Media's group of services set out in Broadcasting Decision 2017-149. However, to reflect its new ownership, WOW Networks stated that it would adhere to the standard conditions of licence for discretionary services set out in Broadcasting Regulatory Policy 2016-436 rather than Comedy Gold's current conditions of licence.

7. WOW Networks stated that in the first broadcast year following its acquisition of Comedy Gold and in each subsequent year, it would devote, by condition of licence, at least 10% of the service's gross annual revenues from the previous broadcast year to the acquisition of or investment in Canadian programming. For the purposes of calculating these expenditures for the first year of operation of the service under WOW Network's ownership, it will use the revenues of the service when it was owned by Bell Media.

8. The Commission received interventions in support of the application, including from the Shaw Rocket Fund (the Rocket Fund), which requested an increased allocation of tangible benefits for its fund. It also received comments from the Canadian Media Producers Association (CMPA) and the Writers Guild of Canada (WGC), to which the applicant replied.

Regulatory framework

9. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.

10. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

Commission's analysis and decisions

11. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:

    - whether Comedy Gold would continue to be owned and controlled by Canadians following the close of the proposed transaction;
    - the potential impact of the proposed transaction on the broadcasting system;
    - the value of the transaction;

- the allocation of tangible benefits;
- Canadian programming expenditure (CPE) and programs of national interest (PNI) expenditure requirements; and
- Comedy Gold's provision of described video.

Ownership and control by Canadians

12. Pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)* (the Direction) issued by the Governor in Council under subsection 26(1) of the Act, no broadcasting licence may be issued and no amendment or renewals thereof may be granted to an applicant that is a non-Canadian. A non-Canadian is a person or entity that is not a Canadian.

13. WOW Networks' chief executive officer and sole director is Canadian. It is wholly owned and effectively controlled by WOW Media, a widely held public corporation controlled by a board of directors composed of 10 directors, including 7 Canadian directors.

14. Further to the Direction, when more than 20% of the voting shares of the parent corporation are owned by non-Canadians or when more than 20% of the parent corporation's board of directors are non-Canadians, the Commission must ensure that the programming decisions of a licensee are made independently from the parent corporation or its directors. In such cases, the Commission generally requires the licensee to establish an independent programming committee (IPC) to ensure that the parent corporation or its directors do not exercise control over or influence programming decisions. Officers, directors and employees of the parent corporation are not eligible to be members of the IPC.

15. As non-Canadians hold in excess of 20% of the voting shares of WOW Media, to comply with the Direction, WOW Networks has set up an IPC with respect to its regulated entity. Further, as per the articles of incorporation of WOW Media, a mechanism has been set up to ensure that non-Canadians never hold more than 33 1/3% of the total voting shares.

16. Following the close of the transaction, Bell Media would become a shareholder of WOW Media, the parent company of WOW Networks, as it would acquire approximately 13% of the voting shares of WOW Media.

17. In light of the above, the Commission is satisfied that following the proposed transaction, Comedy Gold will continue to be owned and controlled by Canadians.

Impact on the broadcasting system

18. To determine whether a proposed transaction is in the public interest, the Commission takes into account a wide set of factors set out in the Act, including the nature of programming and service to the communities involved as well as regional, social, cultural, economic and financial considerations. The Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.

19. WOW Networks intends to rebrand the undertaking to offer children’s and youth programs. It stated that the rebranded service will add variety to the children and youth content sector by increasing the creation and exhibition of new Canadian content, in particular animated and live-action programming. It noted that this sector was currently led by two broadcasters, Corus Entertainment Inc. and DHX Television Ltd. In addition to increasing the diversity of programming for Canadians, the applicant indicated that it anticipates building a solid audience, growing brand recognition and enhancing content discoverability through its multiplatform distribution model.

20. To aid in the production of Canadian programming, WOW Networks intends to support new creators in partnership with local animation and design schools through the WOW Shorts program component of its proposed tangible benefits package and in so doing provide an opportunity for them to showcase their work across WOW Networks’ multiple distribution platforms.

21. The new business positioning is based on WOW Networks’ management team and WOW Media’s broad experience in youth-oriented animated and live action content production and distribution, platform management and consumer behaviour. For example, WOW Networks noted that it had produced several well-known series, such as *Franklin*, *Johnny Test*, *Doodlebops* and *Reboot*. As such, it is well-positioned to transition smoothly from Comedy Gold to the rebranded service.

22. In light of the above, the Commission finds that the proposed transaction would bring benefits to the Canadian broadcasting system. Accordingly, the Commission finds that the transaction is in the public interest.

Value of the transaction

23. The Commission’s tangible benefits policy is set out in Broadcasting Regulatory Policy 2014-459 (the Policy).

24. For the purpose of calculating the value of the tangible benefits, the Commission looks at the value of the transaction as a whole, including the value of the gross debt, working capital to be transferred at closing, ancillary agreements, any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of the leases is calculated over a five-year period.

25. Pursuant to the asset purchase and sale agreement, the purchase price for the assets of the discretionary service is $6,686,892. The transaction does not include debt or working capital transferred at closing, ancillary agreements and leases assumed by the purchaser.

26. The Commission is satisfied that the purchase price represents the value of the transaction.

Allocation of tangible benefits

27. As set out in the Policy, the Commission finds it appropriate to require that tangible benefits generally be provided for changes to the effective control of all radio and television services. The calculation of tangible benefits is based on the value of the transaction.

28. For television broadcasting undertakings, the Policy states that when there is a change of ownership or effective control of an undertaking, purchasers should contribute an amount representing 10% of the value of the transaction as determined by the Commission. Tangible benefit expenditures for all television assets should be incremental, directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction and generally flow to third parties, such as independent producers.

29. The goal of the Policy is to ensure that contributions are directed predominantly to the production of Canadian programming. The Commission generally requires that at least 80% of such benefits be allocated to production funds. At least 60% of that amount must be directed to the Canada Media Fund (CMF) and no more than 40% to certified independent production funds (CIPFs). However, the Commission may consider an alternative allocation if a compelling case is made that it would better meet the public interest.

30. WOW Networks proposed a tangible benefits package of $687,000, equal to 10% of the value of the transaction. Of that amount, $412,200 or 60% would be allocated to the CMF and $137,400 or 20% would be allocated to the Rocket Fund. The remaining $137,400 or 20% would be allocated to the applicant’s WOW Shorts Program, divided equally between Sheridan College and OCAD University. The applicant indicated that through its WOW Shorts Program, it would work closely with each school and select one to two projects per year to put into production. The selected students and their projects would receive the following:

    - hands-on mentorship and support from WOW Networks executives as well as from the members of WOW Networks’ IPC;
    - additional education, training and support in writing, producing and marketing their original projects;
    - non-exclusive broadcast and Internet exposure for their completed projects across WOW Networks’ multiple platforms, including its linear channel; and
    - the possibility that their short film would be commissioned on an exclusive or non-exclusive basis as either a stand-alone short or as an episodic series for any Canadian television or web platform outside of the WOW Networks corporation.

31. WOW Networks also indicated that projects would be selected by a committee with which its executives would be involved. To that effect, it indicated that it would create a 10-person selection panel which would be comprised of WOW Networks executives, members of the administration from each partner school and independent party industry experts (with no links to WOW Networks, its affiliates or shareholders).

32. In regard to the proposed allocation of tangible benefits, the Commission has addressed the following:

- whether the WOW Shorts Program initiative should be considered self-serving and therefore ineligible, and if so, whether an exception to the Policy is warranted to permit this initiative; and

- in the event that the Commission determines that the WOW Shorts Program is an ineligible initiative, whether it should approve the proposal to require that a greater portion of the tangible benefits package be allocated to the Rocket Fund.

Is the WOW Shorts program self-serving and if so, is an exception to the Policy warranted?

33. In light of its involvement in the selection of programming projects and their possible broadcast on WOW Networks' platforms, the applicant was questioned on why the WOW Shorts initiative should not be considered self-serving.

34. WOW Networks replied that executive members of the panel would represent either 2 or 3 of the 10 total votes and that therefore WOW Networks' votes would at no time count for more than 30% of the total. The applicant added that it would create and execute a national outreach to ensure that broadcasters, industry trades, producers and relevant educational sectors would be aware of the projects.

35. WOW Networks further stated that produced projects would be owned by the students and that they would be made available to any appropriate channel or distributor, including WOW Networks' channel. The applicant added that it would issue a joint press release between itself and the partner schools that would be made available across all its web properties, social media accounts and digital platforms. Finally, it stated that it would ensure that the press release and additional information would be sent directly to each broadcaster and production company specializing in children's, youth and family content.

Eligible versus ineligible initiatives

36. In the Policy, the Commission set out a list of initiatives that are considered eligible, as well as a list of examples of initiatives that are considered self-serving and therefore ineligible. Eligible initiatives include direct grants and contributions to schools that offer educational programs focusing on broadcasting-related studies, including communications and journalism, so long as these grants and contributions are unrelated to the training of persons employed by either the purchaser or the undertaking to be purchased.

37. Ineligible, self-serving initiatives include those that would normally be considered the cost of doing business, whose principal purpose is to promote a service that is currently owned or controlled by the purchaser or the service to be acquired or that are used to obtain regulatory credit for investments by broadcasters in their own products, services or programming that would have been produced in the absence of the transaction.

38. The Commission considers that the selection and acquisition of content to be broadcast on WOW Networks' service(s) should be considered a normal cost of doing business. In regard to the WOW Shorts Program in particular, not only would members of the WOW Networks executive sit on the committee that selects the winning projects to be put into production, but WOW Networks would also be able to acquire the programming produced by students through the program. WOW Networks would effectively be obtaining regulatory credit for the funding and later the purchasing of programming that it would otherwise need to acquire to fill its schedule.

39. The Commission is further concerned that the WOW Shorts Program appears to be an initiative that is intended to promote the applicant's brand. As noted above, the Commission has determined that direct grants and contributions to schools that offer educational programs focusing on broadcasting-related studies are considered eligible initiatives only if such grants and contributions are unrelated to the undertaking to be purchased. Further, the company name is contained within the name of the initiative, which is neither appropriate nor within the guidelines of the Policy.

40. Although there are clear benefits associated with this initiative, the Commission finds that the WOW Shorts Program initiative as proposed is self-serving and thus constitutes an ineligible initiative under the Policy.

Exceptions to the Policy

41. In the Policy, the Commission indicated that there may be cases where a proposal that falls within the definition of self-serving may serve the public interest. As part of the evidence to justify such exceptions, applicants are expected to meet the following requirements when filing their applications:

- applicants must clearly show why and how the public interest would be served by what would otherwise be considered self-serving;
- this evidence must be fully presented to the Commission and placed on the public record at the time of filing the application so that interveners may comment on whether the proposal meets the public interest; and
- applicants must ensure that the proposed initiative:
    - yields a clear benefit to the broadcasting system as a whole, the community served by the undertaking to be acquired or both;
    - is clearly an incremental benefit—that is, demonstrably not a normal cost of doing business; and
- is related to the context of the transaction.

42. The onus is firmly on the applicant to provide the Commission with clear and fulsome evidence to justify the exception. In this case, apart from the assertion that the WOW Shorts Program would be beneficial to the Canadian animation industry at large as

well as students from the two schools identified, the evidence and justification provided by WOW Networks were insufficient. Consequently, the Commission does not consider it appropriate to grant an exception to the Policy in this case.

43. Accordingly, the Commission **denies** the applicant's request to direct 20% of the proposed tangible benefits package to the WOW Shorts program initiative.

Should a greater portion of the tangible benefits package be allocated to the Rocket Fund?

44. The Rocket Fund expressed support for the proposed transaction. However, it added that given the declining numbers in the production of children's programming and the fact that children's programming is not sufficiently funded, it should receive, at the very least, the maximum allowable allocation for a CIPF set out in the Policy (32% of the total benefits) rather than 20%. Consequently, the contribution to the CMF would be reduced from 60% to 48%.

45. In this regard, the Rocket Fund stated that according to the 2017 CMPA profile, Canadian children's and youth production has decreased by 16.9% from 2016 to 2017. The CMF reported a reduction in its funding of children's programming from historical levels of 19-20% to 14%. Further, according to the Rocket Fund, the production of original Canadian children's programming is expected to continue to see declines in the 2017-2018 fiscal year due to the current Canadian broadcasting climate and in particular the lack of commissioning of original independently produced children's content from private broadcasters in Canada.

46. The Rocket Fund submitted that it is best suited to invest the tangible benefits in children's, youth and family content. It argued that this revised allocation warrants serious consideration by the Commission as the transfer of ownership would support Canadian children's and youth content and the Rocket Fund directly serves that demographic. The CMPA echoed the Rocket Fund's concerns but went further and requested that an exception be made to the Policy to direct all the tangible benefits, including the allocation to the CMF and the WOW Shorts program, to the Rocket Fund.

47. In its reply to the interventions, WOW Networks stated that if the Commission finds it appropriate to grant the request made by the Rocket Fund and supported by the CMPA, it would agree to reallocate some funds within its proposed tangible benefits package to the Rocket Fund.

48. As set out in the Policy:

- at least 80% of all tangible benefits relating to changes in the effective control of licensed television undertakings shall be allocated to the funds unless a compelling case is made that other measures could better meet the public interest; and

- **of this amount, at least 60%** shall be allocated to the CMF and **no more than 40%** to the CIPFs unless a compelling case is made that another allocation formula could better meet the public interest

49. Aside from the contribution to the CMF, applicants have the choice to fund the CIPF or the initiative of their choosing as long as they choose a CIPF and or an initiative that meets the criteria set out in the Policy. The Commission usually does not direct the applicant as to which initiative to fund but rather analyzes the proposal to verify that it meets all the criteria of the Policy. If it does not, the Commission usually directs the applicant to refile its proposal with amendments or to refile a different proposal that meets the criteria established in the Policy.

50. The Policy is clear that an applicant may select the fund and/or initiative of its choice as long as it meets the criteria established in that policy, including the minimum funding formula noted in paragraph 48 above. Further, the Commission is concerned that approving the request would create a precedent for other interveners seeking to direct tangible benefits to specific funds or initiatives. Consequently, the Commission does not consider it appropriate to deviate from the Policy and override the applicant’s ability to select an initiative of its choice.

Conclusion

51. In light of the above, the Commission **approves** WOW Networks’ proposed tangible benefits of $687,000. In regard to the distribution of monies from that tangible benefits package, as proposed by WOW Networks, the Commission **directs** the applicant to allocate $412,200 (60% of its proposed tangible benefits package) to the CMF and $137,400 (20% of its proposed tangible benefits package) to the Rocket Fund.

52. Further, the Commission **directs** WOW Networks to file, **by 9 August 2018**, a revised proposal for the remaining 20% of its tangible benefits package. In its revised proposal, the applicant may choose to direct these funds to the CMF or another production fund or funds of its choice, including the Rocket Fund; propose a revised initiative that is similar to the WOW Shorts program and that is consistent with the Policy; or propose a new initiative, which would then be evaluated in terms of the eligibility criteria set out in the Policy.

Canadian programming expenditure and programs of national interest expenditure requirements

53. In Broadcasting Regulatory Policy 2010-167 (the group-based licensing policy), the Commission introduced an aggregate level of spending on Canadian programs by designated ownership groups,[1] based on the weighted average of the historical requirements of each of the services composing the group. The Commission also determined that it was appropriate to provide designated groups with the greatest possible flexibility in how they may allocate their spending among their various licensed undertakings. These levels were implemented for the major broadcasting groups through the first group-based licensing proceeding in 2011. In the context of the most recent group-based renewal proceeding in 2017, the general approach was maintained.

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[1] As specified in that regulatory policy, “designated ownership groups” are ownership groups that generate more than $100 million in annual revenues from private, English-language conventional television stations and own at least one English-language discretionary (i.e., specialty and/or pay programming) service.

However, instead of a weighted average of disparate requirements, all services in the group received the same CPE requirement, which for English-language groups was 30% of the previous-year gross annual revenues.

54. In Broadcasting Regulatory Policy 2015-86, the Commission determined that all discretionary services with over 200,000 subscribers should be subject to a CPE requirement. The Commission established a nominal “floor” of 10% for independent services, while noting that expenditure levels would be established on a case-by-case basis and based on historical levels. Since then, the Commission has focused primarily on historical spending on Canadian programming as the basis for establishing new or revised CPE requirements.

55. In the group-based licensing policy, the Commission also introduced the concept of a requirement for expenditures on PNI for the large broadcast groups to encourage spending on specific types of programs, namely dramas, documentaries and award shows. It indicated that this approach would ensure adequate funding for PNI without unduly affecting other types of Canadian programming or imposing unnecessary burdens on the designated groups. In Broadcasting Regulatory Policy 2015-86, the Commission stated that PNI expenditure requirements for the large broadcast groups would continue to be an appropriate tool for ensuring that Canadians have access to the maximum number of programs from program categories that require continued regulatory support.

56. Prior to 2017, Comedy Gold had neither a CPE requirement nor a PNI expenditure requirement as it was a Category B service operating outside of the Bell Media ownership group. Since 1 September 2017, when it was included in the Bell Media group, Comedy Gold has been subject to a 30% CPE requirement and a 5% PNI expenditure requirement.

57. In the present application, WOW Networks proposed a 10% CPE requirement, which for the first year of the licence term would be based on the previous year’s gross annual revenues of the service owned by Bell Media. Further, it requested that no PNI expenditure requirement be imposed. In this regard, the applicant stated that Comedy Gold would become a new independent service and should be licensed as such pursuant to Broadcasting Regulatory Policy 2015-86.

Interventions

58. The CMPA and the WGC requested that the Commission retain Comedy Gold’s current conditions of licence relating to CPE and PNI expenditures for WOW Networks’ service. The CMPA considered that retaining the current CPE and PNI expenditure requirements would ensure that the service will continue to make important contributions to the broadcasting system.

59. The WGC noted that Comedy Gold is not a new discretionary service but is instead an existing service that would be acquired from another corporate owner and subsequently rebranded. It argued that WOW Networks would be in a privileged position as it has chosen to acquire an existing licence along with the service’s existing broadcasting distribution undertaking (BDU) affiliation agreements. As a precedent, the WGC

indicated that the Commission required Family Channel to retain its existing PNI and CPE obligations when it was sold from a large broadcast group to an independent broadcaster (see Broadcasting Decision 2014-388) and that the Commission should do the same for Comedy Gold. According to the WGC, with the assurance that Comedy Gold will have effective and advantageous distribution by BDUs, WOW Networks should be able to accommodate the current requirements.

60. The CMPA also requested that Comedy Gold's current condition of licence relating to independent production be maintained (specifically, that at least 75% of the PNI expenditures be made to an independent production company). It noted that WOW Media, WOW Networks' parent company, also owns some of Canada's largest animation production studios (Mainframe Studios and Rainmaker Studios) and expressed concern that the applicant may only air its own or affiliated productions.

Reply

61. WOW Networks stated that its service should not be required to adhere to conditions of licence that were imposed on services that are part of larger groups. In its view, imposing conditions of licence relating to PNI expenditures and independent production would place a disproportionate burden on it as an independent broadcaster and the resulting undue financial strain would put it at a disadvantage compared to other independent broadcasters. Accordingly, WOW Networks reiterated its request, as an independent broadcaster, to be subject to a 10% CPE requirement and not to be subject to a PNI expenditure requirement.

Commission's analysis and decision

62. Comedy Gold's current CPE requirement was set at 30% when it was included in the Bell Media group of services in September 2017. Prior to that time, Comedy Gold was not subject to a CPE requirement. Pursuant to Broadcasting Regulatory Policy 2015-86, the spending level for discretionary services is based on historical expenditure levels, with 10% being the minimum level. Imposing a requirement that is greater than 10%, such as the 30% CPE requirement advocated by certain interveners, would be inconsistent with the Commission's approach for independent discretionary services. In the Commission's view, it would be reasonable to give this service the same flexibilities that are generally given to other independent discretionary services.

63. In this regard, the Commission's general approach to independent services is to permit them added flexibility in recognition of their comparatively fewer synergies and smaller scale in relation to the large broadcast groups. Not imposing a PNI requirement is a part of this added flexibility. Accordingly, under the ownership of WOW Networks, Comedy Gold should not be required to adhere to a PNI requirement.

64. Finally, given that the 75% independent production spending requirement is related to the imposition of a PNI requirement and generally applied to groups, the Commission does not consider it appropriate to impose such a requirement as a condition of licence. However, the Commission considers that independent production and producers continue to play an important role for both large broadcast groups and smaller independent groups

or services. Although it is affiliated with production studios and will therefore benefit from certain synergies, WOW Networks is encouraged to continue to make the greatest possible use of other non-affiliated independent producers and productions and not to rely exclusively on its own affiliated company. The Commission will consider its activities in this regard at licence renewal.

65. In light of the above, the Commission **approves** the applicant's request for a 10% CPE requirement for Comedy Gold. A **condition of licence** to that effect is set out in the appendix to this decision.

Provision of described video

66. In Broadcasting Regulatory Policy 2015-104, the Commission stated that it would implement a tiered approach to the provision of described video. This approach would ramp up described video requirements over time in accordance with a broadcaster's size and resources. Specifically, by 1 September 2019, broadcasters currently subject to described video requirements, as well as those that belong to vertically integrated entities, will be required to provide described video for their prime-time programming that falls under the identified program categories seven days a week. The Commission also stated that all other non-exempt broadcasters would be required to provide four hours of described video per broadcast week by the fourth year of their respective licence terms (or if they broadcast less than four hours of programming drawn from the identified program categories, to provide the entirety of those programs with described video).

67. In Appendix 2 to Broadcasting Regulatory Policy 2016-436, the Commission established standard conditions of licence to that effect to be considered for imposition during the subsequent television licence renewals, including the renewal of channels and services operated by Bell Media. However, the Commission also noted that requirements relating to the provision of described video for undertakings for which more substantial levels are appropriate would be discussed with those undertakings at licence renewal and imposed on a case-by-case basis.

68. Accordingly, following the issuance of Broadcasting Decision 2017-149, in which the Commission renewed the broadcasting licences for the English-language television stations and services of Bell Media, Comedy Gold, as one of Bell Media's discretionary services, became subject to the following condition of licence set out in Appendix 4 to that decision:

> The licensee shall adhere to the standard conditions of licence, expectations and encouragements for discretionary services as set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception noted below, and the exception of condition 17, which is replaced by the following:
>
> > The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General

entertainment and human interest and 11(b) Reality television, and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

69. WOW Networks requested that Comedy Gold be subject to the standard condition of licence relating to the provision of described video set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436. It submitted that its request was not a matter of financial wherewithal, but a matter of adhering to Commission policy. It noted that formerly as a Category B specialty service, Comedy Gold was not subject to a condition of licence on described video.

70. However, the Commission notes that following Broadcasting Decision 2017-149, Comedy Gold became subject to the requirement applicable to Bell Media's group of services to provide described video for all of its prime-time programming. Given that the asset purchase and sale agreement between Bell Media and WOW Networks filed as part of the present application was signed on 12 September 2017, WOW Networks would be acquiring a service that was and continues to be subject to the described video requirement.

71. The Commission considers that WOW Networks, as an experienced producer of content seeking to enter the broadcasting industry, has the responsibility to be fully aware of the requirements relating to operating a service in the Canadian market. Further, in Broadcasting Regulatory Policy 2016-436, the Commission stated its expectation that smaller programming entities would ramp up to the higher levels of described video for their subsequent licensing terms. Continued ramp-up of described video would be consistent with the objectives of section 3 of the Act, which articulate the principle that access to the broadcasting system is essential to full participation and integration into society. WOW Networks has not provided any compelling rationale relating to financial hardship or other limitations demonstrating that it would not be able to comply with the condition of licence on described video imposed on Comedy Gold in Broadcasting Decision 2017-149. Consequently, the Commission finds that it would not be appropriate to reduce the described video requirement currently imposed on Comedy Gold.

72. In light of the above, the Commission **denies** WOW Networks' request to impose on Comedy Gold the described video condition of licence set out in Broadcasting Regulatory Policy 2016-436. Accordingly, Comedy Gold will continue to be subject to the described video requirement set out by condition of licence in Appendix 4 to Broadcasting Decision 2017-149. A **condition of licence** to that effect in set out in the appendix to this decision.

Conclusion

73. In light of all the above, the Commission **approves** the application by WOW! Unlimited Networks Inc. for authority to acquire from Bell Media Inc. the assets of the national, English-language discretionary service Comedy Gold and for a new broadcasting licence to continue the operation of the service.

74. The Commission **directs** the applicant to file copies of all executed documents supporting the proposed transaction, including the asset and sale purchase agreements, by **9 August 2018**.

75. Upon surrender of the current licence issued to Bell Media, the Commission will issue a new broadcasting licence for Comedy Gold to WOW Networks, which will expire 31 August 2023. The terms and **conditions of licence** for the service are set out in the appendix to this decision.

Secretary General

Related documents

- *Bell Media Inc. – Licence renewals for English-language television stations and services*, Broadcasting Decision CRTC 2017-149, 15 May 2017

- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016

- *Let's Talk TV – Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015

- *Let's Talk TV – The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015

- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014

- *Change in the effective control of Disney Junior, Disney XD and Family Channel from Bell Media Inc. to DHX Media Ltd. and licence amendments*, Broadcasting Decision CRTC 2014-388, 24 July 2014

- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2018-230

Terms, conditions of licence, expectations and encouragements for the national, English-language discretionary service Comedy Gold

Terms

The licence will expire on 31 August 2023.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence for discretionary services set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of condition of licence 17, which is replaced by the following, as well as to the conditions set out in the broadcasting licence for the undertaking:

    The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest and 11(b) Reality television and/or is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).

2. In each broadcast year, the licensee shall devote at least 10% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming. For the first year of the licence term, the calculation of the 10% shall be based on the previous year's gross annual revenues of the previously licensed service.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.