



February 28, 2014

Filed Electronically

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2014-26, Items 1-17

Applications by Rogers Broadcasting Ltd. et al. for the renewal of the broadcasting licences for English-language conventional and multilingual ethnic television stations and for certain specialty television services

1. The Writers Guild of Canada (WGC) is the national association representing more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system.
2. The WGC **conditionally supports** the applications of Rogers Broadcasting Ltd. et al. (Rogers) in Notice of Consultation CRTC 2014-26, Items 1-17 (the Notice), subject to our concerns discussed below. The WGC requests the opportunity to appear at the hearing commencing on April 8, 2014.

Group-based approach to the licensing of the City television stations and specialty Category A services

3. The WGC supports Rogers request that its City television stations and specialty Category A services, including Sportsnet 360, be treated as a designated group for the purposes of the Commission's group-based approach, provided that Rogers maintains its commitments to Canadian programming expenditures (CPE) and programs of national interest (PNI) at 30% and 5%, respectively, of the Rogers group's gross revenues. Further, all PNI expenditures should be true PNI as defined in the group-based policy¹, and not reality television or other types of programming outside of the specified PNI genres.
4. While the WGC supports the inclusion of Sportsnet 360 in the Rogers group, we are concerned about the impact this may have on the flexibility provisions in the group-based policy². Frankly, we are unclear on what these impacts will be, as well as how the Commission will treat the costs associated with the acquisition of sports broadcast rights in this respect.

¹ Broadcasting Regulatory Policy CRTC 2010-167

² Broadcasting Regulatory Policy CRTC 2010-167, paras. 53-54

5. Sportsnet 360, formerly known as The Score, is “a national English-language specialty Category A service that is dedicated to the broadcast of sports results and information in a video and text form”.³ In the group-based policy, the Commission excluded from designated groups mainstream sports and national news specialty services⁴. At the time of the first group-based licence renewals in 2011⁵, The Score was not part of any designated group and therefore was not considered in the context of the group-based policy. As such, the Commission has not yet considered the intersection of its group-based policy, including its CPE/PNI requirements and flexibility provisions, with a channel like Sportsnet 360. While a Category A specialty service, Sportsnet 360 is similar in some respects to current Category C services in that it is essentially a “sports news” channel which, while focused on sports results and updates, may broadcast live sports events coverage of up to 15% of its quarterly broadcast schedule⁶.
6. This is of particular note as it pertains to costs for acquiring the right to broadcast sporting events from professional sports leagues or associations like the National Hockey League (NHL). Services seeking to broadcast sports events must first obtain the right to do so from the applicable sports league, association, and/or team. In the case of popular sports like NHL hockey, these costs can run to nine figures per year. It is not clear to the WGC whether these costs count towards CPE. We note that, in the financial summaries for individual specialty services that the Commission makes available on its website, Sportsnet reported “acquisition of rights” costs of \$108,295,220 for 2012 and that this is shown on a table entitled “Canadian Programming Expenses”.⁷ The comparable data for The Score shows no acquisition of rights costs, even though The Score/Sportsnet 360 does show some live sports events.⁸
7. We ask the Commission to carefully consider the impact the inclusion of Sportsnet 360 will have on CPE in the group-based context, including the acquisition of rights costs and the flexibility to attribute 100% of CPE to any other qualifying specialty service(s), or to conventional television services, within the same designated group. The WGC believes that while CPE may include Canadian sports and news programming, it is problematic to include within CPE the often large amounts of money paid to sports leagues and associations for sports broadcasting rights.
8. The WGC also submits that this issue again raises the matter of effective, detailed reporting on programming expenditures by individual broadcasters. This is particularly important to understand the impacts of the group-based policy’s flexibility provisions, and this data is needed well in advance of the 2016 group licence renewals, so that stakeholders and the Canadian public can effectively comment in that proceeding.

Programming changes related to the OMNI multilingual ethnic television stations

9. The WGC does not have extensive expertise on ethnic and third-language broadcasting, so we can provide only limited comments in this respect. We are, however, disappointed that Rogers believes that the solutions to the challenges facing the OMNI stations is a reduction of Canadian content

³ Broadcasting Decision CRTC 2013-207, Appendix: Terms, conditions of licence, expectations and encouragements for the specialty Category A service The Score, Condition of Licence 2(a)

⁴ Broadcasting Regulatory Policy CRTC 2010-167, paras. 120-122

⁵ Broadcasting Decision CRTC 2011-441, and associated decisions

⁶ Broadcasting Decision CRTC 2013-207, Appendix: Terms, conditions of licence, expectations and encouragements for the specialty Category A service The Score, Condition of Licence 2(d)

⁷ Financial Summaries for Broadcasting Sector, Individual pay, pay-per-view, video-on-demand and specialty services, 2008-2012, Sportsnet:

<http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2012/individual/193.htm>

⁸ Financial Summaries for Broadcasting Sector, Individual pay, pay-per-view, video-on-demand and specialty services, 2008-2012, The Score:

<http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2012/individual/221.htm>

exhibition requirements. While Rogers has clearly articulated many of the problems that OMNI is facing, we find their proposed solutions to be less clear. In fact, Rogers has itself said that it is not sure how to fix the problems at OMNI and “cannot attribute specific cost savings or incremental revenue to any one [condition of licence] amendment” that it is proposing⁹. While Rogers makes several statements to the effect that it intends to maintain its core mandate and approach,¹⁰ when the WGC looks at the totality of Rogers requested changes to the OMNI conditions of licence we find it hard to conclude otherwise than that Rogers intends to increase the volume of U.S., English-language “strip programming” on OMNI’s schedule. Such a strategy is difficult to reconcile with improving or even maintaining service to ethnic and third-language audiences, or to the programming of Canadian content.

10. We are also struck by Rogers’ comparison of the conditions of licence of OMNI with that of private English- and French-language conventional stations, and with Category A specialty services.¹¹ While OMNI may have higher Canadian exhibition requirements than either of those two types of services, Category A channels also have CPE requirements, as do conventional broadcasters within a designated group under the group-based policy. OMNI does not currently have a CPE requirement. The WGC believes that comparing these services to each other would require a complete analysis of all aspects of their licences, not just exhibition requirements.
11. We ask that the Commission look closely at Rogers proposals for its OMNI stations, including those for reducing Canadian content requirements. To the extent that Rogers proposals are inconsistent with the Commission’s Ethnic Broadcasting Policy, it may be more appropriate to consider them in light of a review of that policy, and not in isolation in respect of Rogers’ services alone. Further, if the Commission considers reducing OMNI’s requirements considerably in this licence renewal, we submit that the Commission should also consider granting the OMNI stations a shorter licence term, such as a two-year term consistent with Rogers’ designated group. This would enable the Commission to review within a reasonable time frame what Rogers’ experiments with the OMNI stations have yielded.

Evaluation of Rogers’ compliance with the nature of service definitions for the specialty Category A services G4techTV and Outdoor Life Network

12. The WGC supports the Commission’s genre exclusivity policy, and as such supports the compliance of Category A services G4techTV and Outdoor Life Network (OLN) with their respective natures of service.
13. The WGC is particularly concerned with OLN, which in our view has strayed significantly from its nature of service. OLN’s nature of service definition is to provide a service “devoted exclusively to programs that deal with outdoor recreation, conservation, wilderness and adventure”.¹² This language has a plain, commonly accepted meaning which is more specific than the broad reading given it by Rogers in its application. In the circumstances, the language of OLN’s nature of service may benefit from some examination.
14. While various sources could be cited, Wikipedia may be a good place to go for the common meaning of general topics, and it provides the following description of “outdoor recreation”:

Outdoor recreation or outdoor activity is leisure pursuits engaged in the outdoors, often in natural or semi-natural settings out of town. Examples include adventure racing,

⁹ Rogers’ Letter to the Commission, January 15, 2014, pages 6-7

¹⁰ E.g. Rogers states that it intends to “maintain the level of support [it] currently provides to local ethnocultural communities”: Rogers’ Letter to the Commission, January 15, 2014, page 7

¹¹ Rogers’ Television Licence Renewal Application, Section D – Conventional Ethnic Television Station, para. 68

¹² Broadcasting Decision CRTC 2011-447, Appendix 5: Conditions of licence for the specialty Category A service Outdoor Life Network, 2(a)

backpacking, cycling, camping, canoeing, canyoning, caving, fishing, hiking, horseback riding, hunting, kayaking, mountaineering, photography, adventure park, rock climbing, running, sailing, skiing, and surfing.¹³

15. “Conservation” in this context is described as follows:

The conservation movement, also known as nature conservation, is a political, environmental and a social movement that seeks to protect natural resources including animal, fungus and plant species as well as their habitat for the future.¹⁴

16. “Wilderness” is described as follows:

Wilderness or wildland is a natural environment on Earth that has not been significantly modified by civilized human activity. It may also be defined as: "The most intact, undisturbed wild natural areas left on our planet—those last truly wild places that humans do not control and have not developed with roads, pipelines or other industrial infrastructure."¹⁵

17. And “adventure” is described as follows:

An adventure is an exciting or unusual experience. It may also be a bold, usually risky undertaking, with an uncertain outcome. Adventures may be activities with some potential for physical danger such as skydiving, mountain climbing, river rafting or participating in extreme sports.¹⁶

18. Read together, OLN’s nature of service, on a plain meaning of the words, provides a clear picture of what type of programming OLN is required to present—it is outdoors, non-urban, dealing with nature/wilderness and adventures *in these settings*. In our view, programs in which people purchase unclaimed items at airports (*Baggage Battles*) or from storage facilities (*Storage Wars*), repossess vehicles in urban California (*Operation Repo*), work as bounty hunters (*Dog and Beth: On the Hunt*), operate a liquidation business (*The Liquidator*), participate in beard competitions (*Whisker Warriors*) or look for ghosts (*Ghost Hunters*), do not comply with either the letter or the spirit of OLN’s nature of service. Contrary to Rogers’ claim, OLN’s nature of service should not include “out of the ordinary experiences that take place in the streets and neighbourhoods of urban environments”,¹⁷ since this would be inconsistent with language of the licence dealing with wilderness and the natural world. We particularly disagree with Rogers’ suggestion that a program which takes place outside of a building constitutes “outdoor adventure programming”.¹⁸ Such a broad reading stretches the term to meaninglessness and ignores the remainder of the language of OLN’s nature of service which clearly grounds the channel in natural settings.

19. The WGC understands the ongoing challenges faced by the Commission regarding nature of service issues in other proceedings, such as the recent proceeding for OLN¹⁹. However, the Commission has to date elected to retain its genre exclusivity policy and the bundle of obligations and protections that comes with it. As long as genre exclusivity exists, the WGC believes that it should be appropriately enforced. Alternatively, Category A licensees can elect to give up their licence in exchange for that of a different category.

¹³ http://en.wikipedia.org/wiki/Outdoor_recreation

¹⁴ http://en.wikipedia.org/wiki/Conservation_movement

¹⁵ <http://en.wikipedia.org/wiki/Wilderness>

¹⁶ <http://en.wikipedia.org/wiki/Adventure>

¹⁷ Rogers’ Television Licence Renewal Application, Section E – Specialty Category A services, para. 15

¹⁸ Rogers’ Television Licence Renewal Application, Section E – Specialty Category A services, para. 17

¹⁹ Broadcasting Decision CRTC 2013-125 and Broadcasting Order CRTC 2013-126

20. With regard to G4techTV, the WGC would support Rogers' request to be relieved from the requirement to submit monthly compliance reports only if the Commission is convinced that G4techTV is fully compliant with its nature of service now and, given the past issues with G4techTV and the current issues with OLN, if Rogers demonstrates that monthly compliance reports represent a genuine burden on Rogers.

Deletion of the requirement to abide by a terms of trade agreement

21. The WGC opposes Rogers' request to delete the conditions of licence requiring the Rogers services operating under licences renewed in Broadcasting Decision 2011-441 to adhere to a terms of trade agreement with the Canadian Media Production Association (CMPA). The WGC agrees with the Commission's decision to impose this condition of licence, and agrees with the Commission's finding that a terms of trade agreement between the licensees of programming services and program producers gives both broadcasters and producers stability and clarity in their negotiations, which is in the best interest of the Canadian broadcasting system.

22. However, we have been informed by the CMPA that, subsequent to filing the present applications, Rogers has agreed to withdraw its request regarding the terms of trade agreement. As such, the WGC will not provide further comment at this time. We would, however, like to reserve the right to comment further on this issue should Rogers ultimately maintain this request.

Licence terms for the various services

23. The WGC supports Rogers' proposal for a two-year licence term for all services that would be included in the designated group (including the City television stations and the specialty Category A services The Biography Channel, G4techTV, Outdoor Life Network and Sportsnet 360) so that they have the same expiry date as that of the services of the other large private English-language ownership groups, including Bell Media Inc., Shaw Media Inc. and Corus Entertainment Inc.

Conclusion

24. We thank the Commission for the opportunity to provide our comments related to this transaction, and look forward to elaborating on them at the public hearing.

Yours very truly,



Maureen Parker
Executive Director

c.c.: National Council, WGC
Susan Wheeler, Vice-President, Regulatory, Media, Rogers Media Inc.
(susan.wheeler@rci.rogers.com)

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