



**CFTPA**

Representing television, film  
and interactive production in Canada

**ACPFT**

Porte-parole de l'industrie de la production télévisuelle,  
cinématographique et interactive au Canada

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June 18, 2009

**Via CRTC comments/interventions form**

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2009-272 – Application by Life Network Inc. to amend the broadcasting licence of the national English-language specialty programming undertaking known as Slice (Application No. 2009-0453-3)

1. The Canadian Film and Television Production Association (the “CFTPA” or the “Association”) welcomes the opportunity to provide these comments with respect to the above-referenced Notice of Consultation. The Association submits that Life Network’s application is premature in light of the CRTC’s intention to hold a broadcast corporate group licence renewal hearing in less than a year’s time. For this reason and those noted below, the CFTPA **opposes** the application.
2. The CFTPA represents the interests of almost 400 companies engaged in the production and distribution of English-language television programs, feature films, and interactive media products in all regions of Canada. Our member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

### **The Application**

3. Life Network (the “licensee” or the “applicant”) is seeking to replace two conditions of licence related to Slice’s Canadian programming obligations. Firstly, it proposes to replace the condition of licence relating to levels of Canadian content, which currently reads as follows:

The licensee shall devote not less than 82.5% of the broadcast year and not less than 82.5% of the evening broadcast period to the distribution of Canadian programs.

with the following condition of licence:

The licensee shall devote not less than 60% of the broadcast year and not less than 60% of the evening broadcast period to the distribution of Canadian programs.

4. Secondly, the licensee proposes to replace item a) of the condition of licence relating to Canadian programming expenditures (CPEs), which currently reads as follows:

a) In each broadcast year, the licensee shall expend on Canadian programs not less than 71% of the previous broadcast year's gross revenues;

with the following:

a) In each broadcast year, the licensee shall expend on Canadian programs not less than 45% of the previous broadcast year's gross revenues;

5. Life Network argues that Slice's Canadian content and expenditure levels are disproportionately high compared to those of other licensed Canadian specialty television services. The licensee also states that Slice's current conditions of licence are causing undue financial hardship.

### **The CFTPA's Comments**

6. As the CRTC is aware, the Commission intends to hold a licence renewal hearing by broadcast corporate group in the spring of 2010, meaning it will review an ownership group's conventional television stations and specialty television services together for the first time in the same process. The Commission intends to launch a public process in the coming weeks culminating in a public hearing in the fall to determine the process and scope of the spring 2010 hearing and address a number of major policy issues.
7. Those policy issues include "establishing the appropriate minimum levels of spending on Canadian programming by English-language television broadcasters and the regulatory mechanism to ensure these levels."<sup>1</sup>
8. In the context of the recent public hearing to consider licence renewal applications of private conventional television stations (*Broadcasting Notice of Consultation CRTC 2009-113*), the CFTPA endorsed the concept of broadcast corporate group-based CPEs. As part of the upcoming public process, the Association intends to conduct extensive research and modelling of a group-based CPE approach and other potential regulatory mechanisms to ensure adequate minimum levels of spending on Canadian programming by Canadian broadcasters. Our goal is to provide the Commission with objective data to assist it in choosing an appropriate approach.
9. In light of the above, the Association respectfully submits that it would be premature and inappropriate for the Commission to approve Life Network's application at this time. Any decrease in Slice's Canadian programming or CPE levels in advance of the group-based licensing hearing would result in lower average Canadian programming and CPE levels across Canwest's TV assets and across the industry as a whole, thereby skewing the modelling that the CFTPA intends to conduct.
10. Life Network argues that its application requires immediate consideration in advance of the group licence renewal process to be held next year in light of Slice's financial state and its "unique situation" (i.e., its disproportionately high Canadian content and expenditure levels). It raises the concern that Slice's "unique situation" will "get lost in the shuffle" given the myriad of issues that will be discussed in the upcoming policy process and subsequent group-based licence renewal hearing.

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<sup>1</sup> *Broadcasting Decision CRTC 2009-279*, May 15, 2009, at paragraph 3.

11. While the CFTPA acknowledges that Slice's Canadian content and expenditure levels are disproportionately high compared to those of most other licensed Canadian specialty services, we respectfully disagree with the applicant that its application requires special consideration in advance of the group licence renewal process. In our view, the licensee has failed to provide a compelling case as to why the Commission should consider its licence amendment requests at this time.
12. Firstly, the Commission should not be concerned that Slice's issues be given an "appropriate level of attention" in the upcoming CRTC proceedings. The onus is on Canwest to ensure that its various corporate interests are properly framed and articulated.
13. Secondly, the CFTPA submits that Life Network has exaggerated Slice's financial situation. We note that Slice achieved record revenue of \$39.3 million in 2008, an increase of 17% from the previous year, according to the CRTC's latest statistical and financial summaries for individual specialty services. The service's profit before interest and taxes (P.B.I.T.) moved into positive territory in 2008 after three consecutive years of negative numbers, totalling \$1.3 million, with a P.B.I.T. margin of 3.3%. Moreover, the CFTPA believes that the 7-year financial projections for Slice submitted by the applicant in this proceeding are overly pessimistic and do not reflect the "rebound" year that the specialty service achieved in 2008. As such, the Commission should take extra care in assessing the financial projections filed.
14. In short, we respectfully submit that the sky is not falling on Slice and so there is no need for the Commission to grant the regulatory relief requested at this time.
15. Thirdly, Life Network fails to acknowledge that Canwest achieves significant programming and other synergies across its various conventional and specialty television channels. A simple review of the broadcast schedules of Canwest's television assets suggests that programming and other costs are being shared across many channels within the Canwest group. This is one reason why a licence renewal hearing by corporate group and group-based CPEs make sense. The Commission must be mindful of this in assessing Life Network's request to reduce Slice's Canadian programming and CPE levels in advance of the upcoming group-based licensing process.
16. Fourthly, approving Life Network's request in isolation and in advance of the larger discussion to be had in the group-based licence renewal process would be unfair to those other specialty services that have similarly high Canadian content and CPE requirements. Such a move could also open the door to other specialty channels with similarly high Canadian content and CPE levels to seek similar regulatory relief in advance of the group licence renewal hearing.
17. Finally, the CRTC rejected Life Network's request to reduce its CPE level as part of its last licence renewal in 2001, concluding that it did not present a compelling argument for such a reduction. The Commission added that the high CPE and Canadian content levels originally committed by Life Network in the context of a competitive licensing process "remain consistent and appropriate to Life Network's [now Slice] nature of service."<sup>2</sup> The CFTPA submits that these reasons remain true today with respect to the current application.
18. It is noteworthy that as part of its last licence renewal application, Life Network proposed to lower its CPE level to 60% rather than the 45% it is seeking in the current application. The Commission denied the request even at the higher level of 60%.
19. In conclusion, the CFTPA respectfully submits that it would be premature and inappropriate for the Commission to approve Life Network's application in advance of the group-based licensing hearing in the spring of 2010. Accordingly, the Commission should deny the application.

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<sup>2</sup> *Decision CRTC 2001-152*, February 28, 2001, at paragraph 17.

20. The CFTP A appreciates the opportunity to comment on Life Network's application. A copy of this intervention has been sent to the applicant.

All of which is respectfully submitted.

Yours truly,

*[Original signed by Norm Bolen]*

Norm Bolen  
President and CEO

c.c.: Charlotte Bell, Senior Vice-President, Regulatory Affairs, Canwest

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