



**CFTPA**

Representing television, film  
and interactive production in Canada

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

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June 10, 2010

**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 2010-252, Item #1 – Application by CTVglobemedia, on behalf of its subsidiary CTV Television Inc., to amend the broadcasting licence for the national specialty programming undertaking known as The Comedy Network (Application No. 2010-0462-1)

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.
2. The CFTPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. Our almost 400 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. CTVglobemedia Inc. (“CTVgm” or the “Applicant”), on behalf of its subsidiary CTV Television Inc., has filed an application (the “Application”) seeking to amend certain conditions of licence of the specialty television programming undertaking known as The Comedy Network. Specifically, the Applicant proposes to amend The Comedy Network’s current condition of licence 1(e), which reads as follows:

Programming drawn from categories 7(c) and (d) combined will be limited to 10% of all programming broadcast during each broadcast week.

with the following:

Programming drawn from categories 7(c) and (d) combined will be limited to 10% of all programming broadcast during each broadcast **month**. [change in bold and underlined]

4. CTVgm also proposes to amend The Comedy Network’s current condition of licence 1(f) by removing the restriction that programs from categories 7(c) and (d) be Canadian. The Applicant seeks to replace this condition of licence with the following:

All programs drawn from categories 7(c) and (d) shall have comedy as their primary or defining characteristic.

5. In addition, the Applicant proposes to add program category 2(b) (Long-form documentary) to the list of categories from which The Comedy Network may draw programming, subject to a limit of 10% of the broadcast month.
6. CTVgm states that the intent of its Application is to provide The Comedy Network with additional programming flexibility consistent with the policy changes set out in *Broadcasting Public Notice CRTC 2008-100* ("PN 2008-100"), dated October 30, 2008, which introduced new regulatory frameworks for broadcasting distribution undertakings and discretionary programming services.

### The CFTPA's Comments

#### **The proposed change to condition of licence 1(e)**

7. The CFTPA does not oppose CTVgm's requested change to condition of licence 1(e) and, therefore, has no comments on this element of the Application.

#### **The proposed change to condition of licence 1(f)**

8. The CFTPA does, however, oppose CTVgm's request to amend The Comedy Network's condition of licence 1(f) as outlined above. In the absence of any commitment or assurance from the Applicant that The Comedy Network will continue to air Canadian programming from categories 7(c) and (d), approval of this proposed licence amendment can only lead to a significant reduction in Canadian programming in these categories and a commensurate increase in foreign programming in the same categories on the specialty service.
9. In *Broadcasting Public Notice CRTC 2004-2* ("PN 2004-2"), the introductory statement to the licence renewals of 22 specialty services including The Comedy Network, the Commission stated the following:

In light of the Commission's one-per-genre policy and its objective of maintaining programming diversity, in examining the proposals seeking authority to add or increase drama programming or for other modifications to a licensee's permitted programming, the Commission has sought to determine whether each particular modification would be consistent with the nature of the licensee's service. The Commission has also examined each licensee's nature of service condition of licence to determine whether certain other amendments might be warranted in the interest of greater consistency, precision and clarity, and to reduce the potential for misunderstanding or misinterpretation. In those cases where a licensee has proposed to introduce a drama component to its programming service for the first time, the Commission has required that the additional component be in keeping with the licensee's nature of service, and that it be exclusively in support of Canadian drama programming.<sup>1</sup> [emphasis added]

10. In 2005, CTV filed an application with the Commission seeking approval to add programming categories 7(c) and (d) to the list of categories from which The Comedy Network may draw programming. The CRTC approved the application in *Broadcasting Decision CRTC 2006-15*, dated January 26, 2006, on the condition that all such programming be Canadian, consistent with the Commission's approach articulated in PN 2004-2.
11. The Commission expressed the view that, in the absence of any requirement to broadcast Canadian drama, approval of the application "may only lead to increased competition for the acquisition of broadcast rights to foreign drama programming, much of which is already available in the broadcasting system."<sup>2</sup> By requiring that all programming from categories 7(c) and (d) be Canadian, the Commission stated that the change would allow The Comedy

<sup>1</sup> *Broadcasting Public Notice CRTC 2004-2* – Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services, January 21, 2004, paragraph 27.

<sup>2</sup> *Broadcasting Decision CRTC 2006-15*, The Comedy Network – Licence amendments, January 26, 2006, at paragraph 17.

Network “to play a greater role in the creation and broadcast of Canadian drama, and would not have a negative impact on competition for the acquisition of broadcast rights to foreign drama programming.”<sup>3</sup>

12. In assessing this particular proposed licence amendment, the CFTPA urges the Commission not to lose sight of its rationale noted above for requiring that all programming from categories 7(c) and (d) be Canadian. This rationale is no less important today than when it was first expressed in 2004.
13. The Association submits that CTVgm is seeking programming flexibility by way of this proposed licence amendment that goes beyond that contemplated in PN 2008-100. If approved, it will have a negative impact in terms of Canadian drama in the broadcasting system with no offsetting or *quid pro quo* commitments with respect to other regulatory obligations. At a minimum, and as a general principle, we believe that any changes to conditions of licence should have a neutral impact on the system.
14. Given all of the above, the CFTPA respectfully submits that the proposed amendment should be denied.
15. The Association notes that the Commission stated in PN 2008-100 that it would be more appropriate to consider issues related to programming obligations at licence renewal time. Specifically, the Commission stated the following:
 

With respect to the programming obligations for pay and specialty services, the Commission considers it more appropriate to discuss these in detail at their licence renewals. This will give the licensees an opportunity to assess the impact of the new policies and regulations contained in this public notice and formulate their commitments accordingly.<sup>4</sup>
16. In *Broadcasting Regulatory Policy CRTC 2010-167* (“BRP 2010-167”), dated March 22, 2010, the Commission provided large broadcast groups, such as CTVgm, with significant programming and regulatory flexibility beginning with the next licence period for their programming services.
17. In our view, therefore, consideration of this proposed licence amendment could be part of a broader discussion at licence renewal time regarding the appropriateness of granting The Comedy Network greater programming flexibility in the context of assessing the specialty service’s proposed contributions to Canadian programming. That discussion would also include an analysis of The Comedy Network’s performance over the past licence term in meeting its regulatory obligations, the programming and regulatory flexibility granted in BRP 2010-167, and the continued appropriateness of its Canadian programming requirements and other conditions of licence.
18. In taking this approach, the Commission would be following the general approach it took in a decision last year involving Outdoor Life Network (*Broadcasting Decision CRTC 2009-569*, September 10, 2009) whereby it used the following tests in considering the proposed licence amendments:
  - whether the nature of service was sufficient to ensure the service would remain non-competitive and true to its genre;
  - ensuring the diversity of voices in the Canadian broadcasting system would be maintained or enhanced; and

<sup>3</sup> *Broadcasting Decision CRTC 2006-15*, The Comedy Network – Licence amendments, January 26, 2006, at paragraph 18.

<sup>4</sup> *Broadcasting Public Notice CRTC 2008-100*, Regulatory Policy – Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, October 30, 2008, paragraph 238.

- **whether the conditions of licence would continue to be applied according to their original intent if the requested amendments were approved.** *[emphasis added]*

19. Having analyzed these, the Commission determined that certain Outdoor Life Network licence requirements would be best examined at the upcoming group licence renewal hearing, when they can be considered in the context of Rogers' ownership group and other lifestyle specialty services.
20. As a final point, the Association questions the need for the significant change to condition of licence 1(f) that the Applicant is seeking given The Comedy Network's healthy financial state. While we acknowledge that CTVgm has not argued financial need as a reason for the proposed licence amendment, with a P.B.I.T. (profit before interest and taxes) margin of 24.1% in 2009, The Comedy Network does not appear to need the requested licence amendment at this time.

### **The addition of category 2(b) programming**

21. The CFTPA does not oppose CTVgm's request to add programming category 2(b) (Long-form documentary) to the list of categories from which The Comedy Network may draw programming, subject to a limit of 10% of the broadcast month, provided that the programming it intends to air in this category is consistent with The Comedy Network's nature of service, as CTVgm proposes.
22. The CFTPA notes that the Applicant has made no commitments to the production and exhibition of Canadian programming (let alone original, first-run Canadian programming) in the additional program category it is seeking approval to broadcast. If the Commission approves the requested licence amendment, we would hope and expect that it will result in the broadcast of Canadian programming in category 2(b) and not just foreign programming.

### **Conclusion**

23. In summary, the CFTPA does not oppose CTVgm's request to change The Comedy Network's condition of licence 1(e). We are also neutral on the Applicant's request to add programming category 2(b) (Long-form documentary) to the list of categories from which The Comedy Network may draw programming, subject to a limit of 10% of the broadcast month, provided that the programming it intends to air in this category is consistent with The Comedy Network's nature of service, as is proposed.
24. The CFTPA opposes, however, CTVgm's request to amend The Comedy Network's condition of licence 1(f) by removing the restriction that programs from categories 7(c) and (d) be Canadian. This would be inconsistent with past Commission determinations, as we have outlined above. If approved, this change will have a negative impact in terms of Canadian drama in the broadcasting system with no offsetting or *quid pro quo* commitments with respect to other regulatory obligations. We respectfully submit that it would be appropriate to reconsider this particular proposed licence amendment at the upcoming licence renewal hearing for private broadcast corporate groups in the spring of 2011, in the context of, among other things, the service's proposed contributions to Canadian programming.
25. The CFTPA appreciates the opportunity to comment on the 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.: David Spodek, CTV (via email: [david.spodek@ctv.ca](mailto:david.spodek@ctv.ca))

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