



CFTPA

Representing television, film
and interactive production in Canada

ACPFT

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

www.cftpa.ca

August 3, 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 2010-413 – Application by CTV Limited to amend the broadcasting licences of its television programming undertakings known as the “A” stations (Application No. 2010-0703-9)

1. The Canadian Film and Television Production Association (the “CFTPA” or the “Association”), which will soon officially change its name to the Canadian Media Production Association (CMPA), welcomes the opportunity to provide these **opposing 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. CTV Limited (“CTV” or the “Applicant”) has filed an application (the “Application”) seeking regulatory flexibility related to the policy outlined in *Broadcasting Regulatory Policy CRTC 2010-167* (“BRP 2010-167”), dated March 22, 2010, which set out a group-based approach to the licensing of private television services. Specifically, CTV is requesting the following regulatory relief for its “A” stations:
 - the elimination of any exhibition requirements relating to priority programming, as well as the expectation that 75% of priority programming be sourced from independent producers;
 - to be relieved from complying with Section 4(6) of the *Television Broadcasting Regulations, 1989* (which requires that 60% of all programming broadcast on the undertaking on a yearly basis be Canadian);
 - a condition of licence stipulating that it shall devote not less than 55% of the broadcast year to the broadcast of Canadian programs;

- a condition of licence stipulating that it shall broadcast an average of 4 hours per week of described programming. To fulfill this condition, the described programming may be drawn from the following categories:
 - 2(b) long-form documentary
 - 7(a) ongoing dramatic series
 - 7(b) ongoing comedy series (sitcoms)
 - 7(c) specials, mini-series or made-for-TV feature films
 - 7(d) theatrical feature films aired on TV
 - 7(e) animated television programs and films
 - 7(g) other drama
 - 9 variety;
 - 11 general entertainment and human interest
 - as well as programming targeted to children
 - suspension until the end of the licence term of the current requirement that 50% of required hours of described video be original broadcasts.
4. CTV states that it intends to make best efforts to broadcast and support priority programs and programs of national interest, and that it will also continue to air programming from the independent production community.
 5. The Applicant argues that it needs to accelerate the implementation of “certain policies” announced in BRP 2010-167 to provide for interim regulatory relief to ensure the “A” stations are in a position to continue to operate in the short term.

The CFTPA’s Comments

6. The CFTPA strongly opposes CTV’s Application for the reasons set out below.

CTV’s application is not consistent with BRP 2010-167

7. CTV argues that its Application is consistent with the “policies” outlined in BRP 2010-167. The CFTPA respectfully submits that BRP 2010-167 represents a single policy framework that must be taken as a whole, not a series of individual policies from which licensees can cherry-pick, as CTV is proposing. As such, the Application could only be considered consistent with BRP 2010-167 if CTV proposed to adopt all of the measures outlined in that policy framework, which it has not done.
8. In BRP 2010-167, the Commission noted the following:

As conventional television profitability is challenged by a downturn in advertising revenues and the fragmentation of those revenues, specialty services have demonstrated continued financial strength on the basis of their dual advertising/subscription revenue streams. This has contributed to the overall profitability of the large groups and their ongoing ability to contribute to the creation of high-quality Canadian programming.¹ ...

Through group-based licence renewals, the Commission's objective is to provide private broadcasting groups with greater flexibility in the allocation of resources amongst their various television platforms. These groups require the flexibility to respond quickly to changes in viewer behaviour. Such an approach will allow the Commission to consider factors including, but not limited to, the total audience reached by a broadcasting group, the totality of its revenues and the totality of its programming commitments and obligations.²

¹ *Broadcasting Regulatory Policy CRTC 2010-167 – A group-based approach to the licensing of private television services*, March 22, 2010, paragraph 24.

² *Ibid.*, paragraph 26.

9. In essence, the Commission's group-based licensing policy framework is a recognition that large corporate groups' regulatory obligations need to be assessed in the context of their entire regulated assets, and not in silos.
10. The group-based licensing policy framework represents a balancing of regulatory obligations and flexibility. As such, they must be implemented as a whole.
11. In fact, the CFTPA supported the Commission's move to reduce overall Canadian content exhibition requirements applicable to private conventional television broadcasters to 55%, in combination with the reintroduction of Canadian programming expenditure requirements on such broadcasters, under BRP 2010-167. It would be completely inappropriate for the Commission to allow CTV to receive some of the flexibility provided in the group-based licensing policy framework in advance of having to fulfill the new obligations pursuant to the framework.
12. In our view, approving CTV's Application would set a dangerous precedent that would be very difficult for the Commission to contain going forward. It would open the door for licensees to seek to cherry-pick elements of policy frameworks they like and ask for exemptions and exceptions to elements they do not like. While this would certainly serve corporate interests, it would not be in the best interests of the Canadian broadcasting system as a whole or the public interest.
13. Our concerns about setting a precedent are not misplaced, as evidenced by similar applications for "regulatory flexibility" filed by CTV for its CTV stations and Rogers Broadcasting Limited for its OMNI and Citytv stations, as per *Broadcasting Notice of Consultation CRTC 2010-468* and *Broadcasting Notice of Consultation CRTC 2010-477*, respectively.
14. Moreover, we note that in a news release issued on July 12, 2010 urging the Commission to reject CTV's Application, Quebecor Media Inc. stated that if the CRTC approved the Application, similar flexibility should be extended to other Canadian conventional TV stations.
15. The CFTPA agrees with the following comments made by Quebecor in its news release:

[CTV was fully aware of the implications of its actions when the company acquired the "A" stations in 2007 as part of the CHUM Limited purchase, depriving therefore other parties interested in operating these stations in accordance with the regulations and their current conditions of license and thereby preventing Canadians from having access to a broader diversity of voices.](#)³
16. CTV argues in response to a deficiency question from CRTC staff that "[w]hile the 'A' stations are part of a large multi-station television group, these stations must be able to stand financially on their own and approval of the present application will provide the regulatory relief needed to allow these stations to remain viable through the next broadcast year."
17. This comment completely disregards the entire premise of the Commission's group-based licensing policy framework, and it exposes a significant double standard on the part of CTV. While on the one hand CTV argues that the "A" stations need to stand on their own financially, on the other hand it has no problem taking advantage of the significant regulatory flexibility to meet its regulatory obligations across its entire corporate group as provided for in BRP 2010-167.
18. Even if the Commission were to consider allowing CTV to accelerate implementation of the group-based licensing policy framework in its entirety beginning September 1, 2010, this would be problematic for a number of reasons.

³ Quebecor Media news release, "Quebecor Media believes that the CRTC must reject the applications by CTV Limited in order to obtain regulatory relief for the "A" stations and for the CTV Network or apply the requested conditions to all Canadian conventional television stations", July 12, 2010.

19. First, the Commission has yet to receive comments and make a determination pursuant to *Broadcasting Notice of Consultation CRTC 2010-470* on its proposed definition of Category 2(b) (long-form documentary), which is included in its definition of programs of national interest, a key component of the group-based licensing policy framework.
20. Second, the Commission has yet to collect and publicly release data on broadcasters' historical spending on Category 2(b) in order to finalize the required group Canadian programming expenditure level for programs of national interest.
21. Accordingly, the CFTP A respectfully submits that the only appropriate response is to deny CTV's Application.

CTV has failed to make a case as to why specific relief is necessary at this time

22. The CFTP A submits that CTV has failed to make a case as to why the Commission should provide its "A" stations with the requested relief in advance of the entire group-based licensing policy framework coming into force.
23. While CTV claims that the "A" stations "continue to lose tens of millions of dollars annually," it has failed to provide any empirical evidence on the public file to justify this claim. The CFTP A notes that section 3(2)(a) of the Rules of Procedure requires applications such as CTV's to "contain a clear and concise statement of the relevant facts, the grounds of the application and the nature of the order applied for or decision requested." We submit that CTV has offered no facts on the public file to support its Application other than the existence of a CRTC policy framework intended to be implemented in 2011, and even then it has chosen to cherry-pick elements of that policy framework.
24. CTV fails to acknowledge that the "A" stations are part of a large and profitable corporate group, CTVglobemedia Inc. ("CTVgm"). Regulating groups as a whole is the very foundation of the Commission's group-based licensing policy framework approach. The table below shows that CTVgm was a highly profitable corporate group in 2009 (the last year in which data is publicly available), even during a difficult economic climate and with the exclusion of its profitable mainstream news and sports services, which have been removed since they are not part of the group-based licensing policy framework (French-language services have also been removed).

CTVgm Services 2009 PBIT
(Excluding Mainstream News and Sports Services and French-language Services)

| CTVgm Services | 2009 PBIT |
|---|-----------------------|
| CTV and A stations (combined) | (\$38,694,113) |
| Subtotal Conventional TV | (\$38,694,113) |
| The Discovery Channel | \$25,376,231 |
| Space | \$21,269,405 |
| Bravo | \$18,147,506 |
| The Comedy Network | \$12,388,459 |
| BNN – Business News Network | \$12,199,726 |
| Discovery World HD (formerly Discovery HD) | \$8,564,086 |
| MuchMusic | \$7,030,316 |
| MuchMore | \$6,668,719 |
| Star! TV | \$6,351,663 |
| Investigation Discovery (formerly CourtTV Canada) | \$2,757,697 |
| Book Television | \$1,945,288 |
| travel + escape | \$1,593,580 |
| Comedy Gold (formerly TV Land) | \$1,290,250 |
| Animal Planet | \$1,029,662 |
| MuchMoreRetro | \$615,609 |
| Discovery Science (formerly Discovery Civilization Channel) | \$571,134 |
| MuchVibe | \$531,151 |
| ESPN Classic Canada | \$462,081 |
| PunchMuch | \$431,429 |
| MTV2 (formerly Razer) | \$340,311 |
| MuchLoud | \$190,140 |
| CP24 | (\$565,937) |
| Fashion Television | (\$1,421,003) |
| MTV Canada | (\$5,365,490) |
| Subtotal Specialty TV | \$122,402,013 |
| Total Group PBIT | \$83,707,900 |

25. CTV has also conveniently ignored the improving advertising market and overall economic environment in Canadian broadcasting. For example, CTVgm shareholder Torstar Corporation recently highlighted improved financial results reflecting higher revenues and EDITDA for CTVgm in reporting its fiscal second quarter financial results ended June 30, 2010.⁴
26. In fact, all evidence suggests 2010 is shaping up to be a good rebound year for Canadian broadcasters. For example, the Commission should consider the following:
- CTV's principal competitor, Canwest, reported increased revenue and operating profit for its television operations for its fiscal third quarter ended May 31, 2010. Excluding results from the company's discontinued E! network from the previous year, revenue was up 14% and operating profit increased 39% to \$101 million in this year's quarter compared to same the period last year.⁵

⁴ Torstar Corporation Interim Management's Discussion and Analysis for the three and six months ended June 30, 2010 and 2009, July 27, 2010.

⁵ Canwest news release, "Canwest Global Communications Corp. Reports Third Quarter 2010 Results", July 15, 2010.

- In reporting its fiscal second quarter financial results ended June 30, 2010, Rogers Communications Inc. noted that its Media division saw an increase in revenue, reflecting improvements in prime-time TV ratings, increased subscriber fees, a better advertising market, and in consumer discretionary spending.⁶
 - Corus Entertainment Inc.'s Television segment saw revenue increase by 13% in the company's fiscal third quarter ended May 31, 2010, reflecting a 13% increase in subscriber revenues and "a return to strong growth in advertising revenues with an increase of 11%." Segment profit increased by 17% in Q3 and 11% year-to-date.⁷
 - Astral Media's Television division saw advertising revenue increase by 17% in the company's fiscal third quarter ended May 31, 2010 compared to the same quarter the previous year.⁸
27. Given the increasing evidence that the advertising market is rebounding and the overall economic situation is improving in the broadcasting industry, the CFTPA submits that the CRTC should take into account the improvements in both the financial situation of CTVgm as a whole this year and the advertising market in assessing CTV's application.

The CHCH-TV and CHEK-TV examples are irrelevant

28. CTV points to the Commission's decisions last year to grant CHCH-TV and CHEK-TV similar regulatory flexibility as a precedent for approving its Application.
29. The CFTPA submits that the CHCH-TV and CHEK-TV examples are entirely different cases from the CTV "A" stations. First, the purchasers of those stations are not part of large and profitable corporate groups like CTV. CHCH-TV is owned by Channel Zero Inc., which also owns CJNT-TV in Montreal and two Category 2 digital specialty television services (Movieola and Silver Screen Classics). CHEK-TV is a stand-alone operation owned by a consortium of local investors, 39 employees of the station, and Communications, Energy and Paperworkers Union locals.
30. Second, the requirement to broadcast priority programming has historically been a condition of licence placed generally on only large, multi-station ownership groups. Given that CHCH-TV and CHEK-TV do not fit the Commission's definition of such groups, it was understandable – albeit disappointing – for the Commission to have concluded that it would not be appropriate to require CHCH-TV and CHEK-TV to broadcast priority programming at this time.
31. Accordingly, the CFTPA urges the Commission to reject CTV's comparisons of its Application to the recent CHCH-TV and CHEK-TV cases. They are simply not relevant comparisons.
32. In its interventions commenting on the CHCH-TV and CHEK-TV transactions, the CFTPA expressed deep concerns that the regulatory relief requested by CHCH-TV and CHEK-TV, and ultimately approved by the Commission, could be the beginning of a slippery slope to lower overall regulatory obligations by conventional television broadcasters. We warned that if the large, multi-station ownership groups continue to raise the threat of closing or divesting stations, applications similar to the CHCH-TV and CHEK-TV ones could soon become the norm. Unfortunately, as CTV's Application demonstrates, our concerns were not misplaced.

⁶ Rogers news release, "Rogers Reports Second Quarter 2010 Financial and Operating Results", July 27, 2010.

⁷ Corus Entertainment Third Quarter 2010 Report to Shareholders For the Three and Nine Months Ended May 31, 2010 (Unaudited), July 14, 2010.

⁸ Astral Media Third-Quarter Report to Shareholders, July 15, 2010.

33. Accordingly, we urge the Commission to ensure that when it assesses CTV's Application, it take a holistic view of the very recently developed policy framework under BRP 2010-167, as well as of the broadcasting system and all of its stakeholders, with a view that additional precedents not be set that will have a long-lasting negative impact on the provision of diverse Canadian programming for Canadians.

Conclusion

34. In summary, the CFTPA opposes CTV's Application for regulatory flexibility in advance of implementation of the entire group-based policy framework. In our respectful submission, it would be completely inappropriate for the Commission to allow CTV to receive some of the flexibility provided in the group-based licensing policy framework prior to having to fulfill the new obligations pursuant to the framework. For all of the reasons stated in this intervention, CTV should not be allowed to cherry-pick what it likes about the policy framework and accelerate its implementation.
35. The regulatory relief requested by CTV seems incredibly one-sided in favour of its own business interests and appears blind to the significant negative impact that such relief, if granted, would have on other important stakeholders in the Canadian broadcasting system, namely Canadian television viewers, the independent production sector, and the creative community.
36. 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)

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