



August 18, 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 2010–477, Items #1 and #2 – Applications by Rogers Broadcasting Limited to amend the broadcasting licences of its OMNI and Citytv television programming undertakings (Applications No. 2010–0883–9 and 2010–0885–5)

1. The Canadian Media Production Association (the “CMPA” or the “Association”), formerly known as the Canadian Film and Television Production Association, welcomes the opportunity to provide these **opposing comments** with respect to the above–referenced Notice of Consultation.
2. The CMPA 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. Rogers Broadcasting Limited (“Rogers” or the “Applicant”) has filed applications (the “Applications”) 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. With respect to the OMNI stations, Rogers is seeking to replace the condition of licence related to the exhibition of Canadian programming, which reads as follows:

The licensee shall devote to the broadcast of Canadian programs:

- a) not less than 60% of the total number of hours broadcast annually between 6 a.m. and midnight;
- b) not less than 50% of the total number of hours broadcast annually between 6 p.m. and midnight.

with the following condition:

- a) not less than 55% of the total number of hours broadcast annually between 6 a.m. and midnight
 - b) not less than 50% of the total number of hours broadcast annually between 6 p.m. and midnight.
4. With respect to the Citytv stations, Rogers is seeking an exception to section 4(6) of the *Television Broadcasting Regulations, 1987*, which requires that 60% of all programming broadcast on the undertaking on a yearly basis be Canadian. The Applicant proposes to replace this requirement with a condition of licence stipulating that the undertakings shall devote not less than 55% of the broadcast year to the broadcast of Canadian programs.
 5. Rogers proposes that the requested amendments take effect by September 1, 2010.
 6. The Applicant argues that approval of the proposed amendments will not impact the level of Canadian content broadcast during peak viewing hours on its OMNI and Citytv stations. It also suggests that its proposal will have no impact on its broadcast of original Canadian programming, which is scheduled during those peak viewing hours. It adds that the additional flexibility provided by the overall 55% Canadian content requirement would affect only the broadcast of repeat Canadian programming. Thus, there would be no impact on its use of the independent production sector.

The CMPA's Comments

7. The CMPA strongly opposes Rogers' Application for the reasons set out below.

Rogers' application is inconsistent with BRP 2010-167

8. Rogers states that it wishes to take advantage of the additional flexibility provided by the Commission's new Canadian content policy for conventional television stations announced in BRP 2010-167.
9. The CMPA 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 Rogers is proposing. As such, the Application is inconsistent with BRP 2010-167 since Rogers has not proposed to adopt all of the measures outlined in that policy framework.

10. 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

11. 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.
12. The group-based licensing policy framework represents a balancing of regulatory obligations and flexibility. As such, they must be implemented as a whole.
13. In fact, the CMPA 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 Rogers 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.
14. In our view, approving Rogers' 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.

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.

15. Our concerns about setting a precedent are not misplaced, as evidenced by similar applications for “regulatory flexibility” recently filed by CTV Limited (“CTV”) for its “A” stations and CTVglobemedia Inc. (“CTVgm”) for its CTV and ASN stations, as per *Broadcasting Notice of Consultation CRTC 2010–413* (“BNC 2010–413”) and *Broadcasting Notice of Consultation CRTC 2010–468* (“BNC 2010–468”), respectively.
16. Moreover, we note that in a news release issued on July 12, 2010 urging the Commission to reject the CTV and CTVgm Applications, Quebecor Media Inc. stated that if the CRTC approved the Application, similar flexibility should be extended to other Canadian conventional TV stations. Canwest Television Limited Partnership made the same comment in its intervention filed pursuant to BNC 2010–413 (and repeated in its intervention related to BNC 2010–468), as follows:

Given that the seminal policy determinations contained in BRP CRTC 2010–167 were released just four (4) months ago, we submit that such relief, if granted, should be afforded to all broadcasters that fall under that new regime. These policy determinations were intended for universal application at the same time.³
17. Rogers’ Application completely disregards the entire premise of the Commission’s group-based licensing policy framework, and exposes a significant double standard on the company’s part. While on the one hand Rogers has no problem accelerating implementation of a significant regulatory flexibility granted in BRP 2010–167 (i.e., a reduction in overall Canadian content for its conventional TV stations), it is apparently unwilling to fulfill the new regulatory obligations pursuant to the policy framework at the same time.
18. Even if the Commission were to consider allowing Rogers 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.
19. First, the Commission has yet to 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 CMPA respectfully submits that the only appropriate response is to deny Rogers’ Application.

³ Canwest Television Limited Partnership intervention to *Broadcasting Notice of Consultation CRTC 2010-413*, August 3, 2010, paragraph 6.

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

22. The CMPA submits that Rogers has failed to make a case as to why the Commission should accelerate one element of the group-based licensing policy framework for its OMNI and Citytv stations, in the form of a reduction in Canadian content obligations, in advance of the entire policy framework coming into force. Rogers offers no substantive rationale why an exception should be made and the reduction in Canadian content should be accelerated. Rogers' suggestion that its proposed licence amendments would affect only the broadcast of repeat Canadian programming and thus would have no impact on its use of the independent production sector is completely irrelevant and not supported by any evidence.
23. The CMPA notes that section 3(2)(a) of the Rules of Procedure requires applications such as the one that is the subject of this proceeding 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 the Applicant has offered no facts on the public file to support its specific claims and the overall 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. Rogers also fails to acknowledge that its OMNI and Citytv stations are part of the large and highly profitable vertically integrated Rogers Communications Inc. corporate group. Regulating groups as a whole is the very foundation of the Commission's group-based licensing policy framework approach.
25. While we acknowledge that Rogers has not directly argued financial need as a rationale for its Application, the Commission should be mindful of the improving global and Canadian advertising markets and the better overall economic environment in international and Canadian broadcasting when assessing Rogers' Application.
26. Globally, for example, Informa Telecoms & Media predicts net TV advertising to grow by 3.7% in 2010 from the previous year.⁴ In the U.S., CBS's local television stations saw revenues increase 31% to \$337.9 million in CBS Corporation's fiscal 2010 second quarter ended June 30, 2010 from the same period last year "due to the improved advertising marketplace across many key categories."⁵
27. The economic environment appears to be equally buoyant for Canadian broadcasters. According to one news report, Canadian conventional TV networks were asking media buyers for upwards of 10% increases in ad pricing in the recent "upfront" sales process. When asked to

⁴ Global TV Advertising Forecasts – Extract, Informa Telecoms & Media, www.informatm.com/gntv.

⁵ CBS Corporation news release, "CBS Corporation Reports Second Quarter 2010 Results," August 3, 2010.

comment on this year's negotiating environment, CTV's Executive Vice-President of Sales and Marketing offered the following comment: "The upfront market for conventional TV is buoyant, and specialty has been strong as well, with inventory moving earlier and faster than last year."⁶

28. Moreover, Group M, a division of WPP, predicts that TV's share of the Canadian advertising market will grow to 27.8% in 2010 from 27.1% in 2009.
29. Indeed, all evidence suggests 2010 is shaping up to be a good rebound year for Canadian broadcasters. For example, the Commission should consider the following:
- In reporting its fiscal second quarter financial results ended June 30, 2010, Rogers Communications 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.⁷
 - 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, 2010.⁸
 - Canwest Global Communications Corp. 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.⁹
 - 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.¹⁰
 - 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.¹¹
30. Given the increasing evidence that the advertising market is rebounding and the overall economic situation is improving in the broadcasting industry, the CMPA submits that the CRTC should take into account the improvements in both the financial situation of Rogers as a whole this year and the advertising market in assessing the merits of the Application.

⁶ Bailey, Katie. "2010 upfronts 'fast and furious,' buyers say," [Media in Canada](#). June 28, 2010.

⁷ Rogers news release, "Rogers Reports Second Quarter 2010 Financial and Operating Results", July 27, 2010.

⁸ Torstar Corporation Interim Management's Discussion and Analysis for the three and six months ended June 30, 2010 and 2009, July 27, 2010.

⁹ Canwest news release, "Canwest Global Communications Corp. Reports Third Quarter 2010 Results", July 15, 2010.

¹⁰ Corus Entertainment Third Quarter 2010 Report to Shareholders For the Three and Nine Months Ended May 31, 2010 (Unaudited), July 14, 2010.

¹¹ Astral Media Third-Quarter Report to Shareholders, July 15, 2010.

Conclusion

31. In summary, the CMPA opposes Rogers' 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 Rogers 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. Furthermore, Rogers offers no substantive arguments in its Application to justify the Commission granting it a precedent-setting exception to the group-based policy framework. For all of the reasons stated in this intervention, Rogers should not be allowed to cherry-pick what it likes about the policy framework and accelerate its implementation.
32. Moreover, the regulatory relief requested by Rogers 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.
33. The CMPA 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.: Susan Wheeler, Vice-President, Regulatory Affairs, Rogers Media (via email:
susan.wheeler@rci.rogers.com)

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