



Broadcasting Decision CRTC 2009-569

Route reference: 2009-104

Ottawa, 10 September 2009

Rogers Broadcasting Limited
Across Canada

Application 2009-0228-0, received 27 January 2009

Outdoor Life Network – Licence amendments

*The Commission **denies** an application by Rogers Broadcasting Limited to amend the broadcasting licence for the national, English-language specialty television service known as Outdoor Life Network. Specifically, Rogers had proposed to add categories to the list of program categories that may be broadcast by the service; increase the percentage of programming that may be broadcast from category 7 Drama and comedy from 5% to 25%; and remove requirements that programming drawn from category 7 Drama and comedy be Canadian and that programming drawn from category 6(a) Professional sports not include stick and/or ball sports.*

Introduction

1. The Commission received an application by Rogers Broadcasting Limited (Rogers) to amend the broadcasting licence for the national, English-language specialty television programming undertaking known as Outdoor Life Network (OLN). Specifically, Rogers proposed to:
 - add categories 7(b) Ongoing comedy series (sitcom), 7(e) Animated television programs and films and 7(f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy to the list of program categories that may be broadcast by the service;
 - increase the percentage of programming that may be broadcast from category 7 Drama and comedy from 5% to 25%;
 - remove the requirement that programming drawn from category 7 Drama and comedy be Canadian; and
 - remove the requirement that programming drawn from category 6(a) Professional sports not include stick and/or ball sports.

2. The licensee stated that these amendments would allow for a more well-rounded programming offering that responds to the expectations of its viewers, and that its existing Canadian content requirements would be sufficient to ensure the broadcast of appropriate levels of Canadian content under the amended conditions of licence. The licensee also stated that it filed this application in light of the programming flexibility for specialty services announced in Broadcasting Public Notice 2008-100.
3. The Commission received several interventions in opposition to the application, two comments and one intervention in support of the application. The interventions and Rogers' reply to the interventions can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

4. After examining the application in light of applicable regulations and policies and taking into account the interventions received and the applicant's reply to the interventions, the Commission considers that the issues to be addressed in its determinations are the following:
 - the scope of the flexibility granted under Broadcasting Public Notice 2008-100;
 - the request to add categories 7(b), (e) and (f) and increase the amount of dramatic programming;
 - the request to remove the restriction on Canadian drama;
 - the request to remove the restriction to broadcast stick and/or ball sports.

Scope of the flexibility granted under Broadcasting Public Notice 2008-100

5. In Broadcasting Public Notice 2008-100, the Commission stated that it would simplify the regulations concerning specialty channels' nature of service definitions and allowable program categories. Specifically, it stated that:

The Commission is of the view that, in most instances, the narrative descriptions of Category A services are sufficiently specific to ensure that these services remain true to the genre for which they were licensed. Therefore, the Commission determines that it will permit all Category A services to draw programming from all program categories, thereby providing these services with greater flexibility in this regard. However, to ensure that this change does not permit services to morph into other established programming genres, and thus become directly competitive with other Category A services, the Commission will establish a standard limitation of 10% of the broadcast month for the following categories:

- 2(b) Long-form documentary;
- 6(a) Professional sports;
- 7 Drama and comedy;
- 7(d) Theatrical feature films aired on television;
- 7(e) Animated television programs or films; and
- 8(b) and (c) combined – Music video clips and Music video programs

Where a licensee is currently permitted to broadcast more than these standard limitations, it may continue to do so.

6. The Commission also stated that it may allow amendments to other conditions of licence where it finds that the nature of service definition is sufficient to ensure a Category A service (presently known as analog and category 1 pay and specialty services) remains non-competitive and true to its genre.
7. In assessing this application, the Commission examined whether OLN's nature of service is sufficient to ensure the service would remain non-competitive and true to its genre, the diversity of voices in the Canadian broadcasting system would be maintained or enhanced, and the conditions of licence would continue to be applied according to their original intent if the requested amendments were approved.

Request to add categories 7(b), (e) and (f) and increase the amount of dramatic programming

8. Interveners including CTVglobemedia Inc. (CTVgm), the Writers Guild of Canada, the Alliance of Canadian Cinema, Television and Radio Artists, the Canadian Film and Television Production Association and individual members of the public were concerned that approving Rogers' proposed amendment concerning drama would dilute OLN's nature of service and contradict the intent of the Commission's original licensing decision. Both Canwest Television Limited Partnership and Teletoon Canada Inc. proposed an alternative amendment limiting OLN to 10% for all category 7 programming combined.
9. The Commission, in its review of the application, has similar concerns as those expressed by the interveners. The Commission is concerned that the amendment proposed by Rogers could result in the programming direction of the service becoming inconsistent with its current nature of service.
10. Furthermore, the Commission notes that some of the programs Rogers proposed to broadcast if the proposed amendments were granted would actually be categorized as documentaries (category 2a) or reality programming (category 11). Rogers is currently authorized to air both program categories without limit.
11. Accordingly, the Commission **denies** Rogers' request to increase the amount of dramatic programming it would be able to broadcast on OLN.

Request to remove the restriction on Canadian drama

12. The Commission notes that the original intent of allowing OLN and other lifestyle specialty services to air dramatic programming was to create space for Canadian drama within each licensee's existing nature of service. In Broadcasting Public Notice 2004-2, the Commission stated the following:

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.

13. Although OLN's current conditions of licence require it to devote 50% of the broadcast day and 40% of the evening broadcast period to Canadian programming, if the Canadian drama requirement were removed, OLN could be in compliance with these levels even if its drama allocation consisted entirely of non-Canadian programs. The Commission is of the view that such a scenario would not be consistent with the Commission's original objective in permitting the broadcast of category 7 programming on OLN and comparable specialty services.

14. In addition, the Commission indicated in Broadcasting Public Notice 2008-100 that:

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.

15. The Commission therefore finds that OLN's Canadian drama requirement is best examined at the upcoming group-based licence renewal hearing, when it can be considered in the context of its ownership group and other lifestyle specialty services.

Request to remove the restriction to broadcast stick and/or ball sports

16. In their interventions, both Score Media Inc. and CTVgm argued that relaxing OLN's restrictions on professional sports might lead to inappropriate competition or synergies between OLN and other mainstream sports services.
17. The Commission notes that the original condition of licence was imposed to prevent sports programming overlap between OLN and other services owned by its shareholders. Although the stick and ball sports prohibited by the condition of licence are already inconsistent with OLN's nature of service, due to the potential synergies between OLN and Sportsnet, also a Rogers service, the Commission is of the view that OLN should continue to be explicitly prohibited from broadcasting such sports to prevent the use of OLN as a second window for Sportsnet and to ensure the programming aired on OLN continues to be consistent with its nature of service.

18. The Commission also dismisses Rogers' argument that OLN should be granted the amendment to compete with competitive mainstream sports services as proposed in Broadcasting Public Notice 2008-100 and Broadcasting Notice of Consultation 2008-103, as OLN will continue to benefit from genre protection, while the competitive services will not. Additionally, because competitive services have higher Canadian content requirements than OLN, OLN would be at an advantage if its restrictions on professional sports were removed. Should OLN wish to compete with mainstream services, it must apply for and abide by the standard competitive conditions of licence as outlined in Broadcasting Regulatory Policy 2009-562.

Conclusion

19. In light of all of the above, the Commission **denies** the application by Rogers Broadcasting Limited to amend the broadcasting licence for the national, English-language specialty television programming undertaking known as Outdoor Life Network.

Secretary General

Related documents

- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news*, Broadcasting Regulatory Policy CRTC 2009-562, 4 September 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice 2004-2, 21 January 2004

This decision is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.