



Broadcasting Decision CRTC 2013-207

PDF version

Route reference: 2013-12

Ottawa, 30 April 2013

Rogers Media Inc., on behalf of The Score Television Network Limited
Across Canada

Applications 2012-1327-2 and 2012-1573-1, received 17 October 2012

The Score – Change in effective control and licence renewal and amendment

*The Commission **approves** the application by Rogers Media Inc. (Rogers) on behalf of The Score Television Network Ltd. (STNL) for authority to change the effective control of STNL so that control is exercised by Rogers. However, with respect to Rogers' proposal to direct part of the benefits related to this transaction to the Sportsnet Winter Games initiative, the Commission considers that the proposal does not provide sufficient benefits to the Canadian broadcasting system or the community served by The Score as a national English-language service. The Commission therefore **directs** Rogers to submit an alternate proposal for approval by the Commission by **30 May 2013**.*

*The Commission also **approves** the application to renew the broadcasting licence for The Score and to amend the conditions of licence in effect under the current licence. The terms and **conditions of licence** are set out in the appendix to this decision. The new licence will expire on 31 August 2014 to align The Score's renewal with that of other Rogers services and thus allow the Commission to reassess the applicability to Rogers of the Commission's group-based policy for large private broadcast ownership groups and Rogers' commitments to spending on Canadian programming and programs of national interest.*

Introduction

1. Rogers Media Inc. (Rogers) filed an application (2012-1327-2) on behalf of The Score Television Network Limited (STNL) for authority to change the effective control of STNL from Peter Viner (the trustee)¹ to Rogers.

¹ On 24 August 2012, the Commission administratively approved a Voting Trust Agreement. Under the provisions of the agreement, all of the shares in Score Media Inc. were to be transferred to an independent trustee pending the Commission's decision on the current proposed ownership transaction. This authorization was valid until 24 February 2013 but was extended until 30 April 2013 through a second administrative decision on 15 February 2013.

2. STNL is the licensee of the specialty Category A service The Score. Following the transaction, STNL would be controlled by Rogers, a corporation owned and controlled by Rogers Communications Inc.
3. The transaction would be effected through the transfer of all of the shares in the share capital of Score Media Inc. (Score Media), the parent corporation of STNL, from the trustee to Rogers. Prior to the appointment of a trustee, John Levy was the largest shareholder of Score Media and as such exercised effective control of STNL through his ability to nominate and elect a majority of the members on Score Media's board of directors.
4. Rogers proposed a value of the transaction of \$172 million, which included the purchase price for all of the issued and outstanding shares in the share capital of Score Media and other settlement arrangements related to the transaction. The applicant proposed a tangible benefits package representing 10% of the value of the transaction.
5. The applicant also filed an application (2012-1573-1) to renew the broadcasting licence for The Score, which expires on 31 August 2013,² as well as to amend its conditions of licence.
6. Specifically, Rogers proposed to increase the amount of analysis and interpretation (category 2(a)) and long-form documentary programming (category 2(b)) on The Score from 10% to 15% of these categories combined.³ Rogers submitted that this amendment would allow it to expand its analysis of all sports, including amateur and under-represented sports.
7. Rogers also requested that The Score no longer be required to break into live sports event programming every 15 minutes to present video highlights and sports results, as it is currently required to do for all programming other than headline sports news broadcasts. Specifically, it requested that this requirement, which is set out in the service's condition of licence 1(f), be replaced by the following conditions of licence:
 - (f) The licensee shall break into all programming other than headline sports news broadcasts and live sports event programs at least once every 15 minutes to present video highlights as well as sports results and information in a format that includes both audio and video components.
 - (g) The licensee shall break into live sports event programming a minimum of once an hour to present video highlights as well as sports results and information in a format that includes both audio and video components.
8. Rogers stated that this amendment would give it the flexibility needed to provide The Score's signature headline news programming in the manner most suitable to the

² The licence was administratively renewed from 1 September 2010 until 31 August 2013 as a result of Broadcasting Decisions 2010-562 and 2011-417.

³ See condition of licence 1(c) in the appendix to Broadcasting Decision 2004-10.

types of sports broadcast live on the service. More particularly, Rogers submitted that it was prepared to break into live sports once every 15 minutes as the nature of the game permits, but that the mandatory break every 15 minutes could be very disruptive during certain live sporting events with continuous play without pre-planned breaks for the players or broadcast purposes, such as soccer.

Interventions and applicant's reply

9. The Commission received interventions in support of the applications, as well as interventions providing comments and interventions in opposition to the applications, to which the applicant replied. The complete record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
10. Bragg Communications Incorporated, operating as Eastlink (Eastlink), submitted that the Commission should deny the application for The Score to be renewed as a protected specialty Category A service and instead renew it as a specialty Category C or mainstream sports service, stating that there was no reason for the ongoing protection of mandatory carriage status. Eastlink also submitted that the proposed amendments to The Score's conditions of licence would expand the scope of the service beyond its original genre.
11. Bell Media Inc. submitted that The Score's licence should only be renewed until 31 August 2014 to align it with the licence term granted to Rogers' other services and therefore allow the Commission to consider whether it should be included in its asset mix for the purposes of applying a group Canadian programming expenditure (CPE) requirement. Bell also submitted that a condition of licence should be imposed on The Score defining what constitutes live sports programming to prevent the service from time-delaying non-Canadian live programming to circumvent its conditions of licence.
12. In reply, Rogers noted that The Score was not a mainstream sports service and submitted that the proposed amendments would not change the fundamental nature of the service as a headline sports news service. Specifically, Rogers noted that the proposed amendments would not alter the minimum requirements specifying that 85% of the programming aired on The Score should contain only sports news, headlines and audiovisual clips. Rogers also indicated that it believed that a seven-year term was necessary to provide stability for The Score. Finally, Rogers stated that it would be unfair for the Commission to impose a definition of "live programming" on only one licensee and that such a decision should only be addressed in the context of a public policy proceeding.

Commission's analysis and decisions

13. Having examined the public record relating to these applications in light of applicable policies and regulations, the Commission considers that the issues it must address are the following:

- the value of the transaction;
- the proposed tangible benefits; and
- the conditions of licence and licence term.

Value of the transaction

14. Because the Commission does not solicit competing applications for authority to change the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.

15. In accordance with the Plan of Arrangement, the purchase price is \$1.62 per share, amounting to \$132,753,607. Further to a clarification letter and in accordance with the Commission’s principles set out in Broadcasting Public Notice 2008-57, Rogers proposed a total value of the transaction of \$172,174,047. The Commission accepts this valuation. The value of the transaction is summarized in the following table:

Value of the transaction	
Share Purchase Price	\$132,753,607
Additions:	
Assumed leases	\$ 4,998,662
Other considerations included by the applicant:	
Debt retirement	\$ 14,874,182
Working Capital for Score Digital	\$ 11,593,542
Cash out of in-the-money options	\$ 3,821,779
Third-party transactions of Score Media	<u>\$ 4,132,275</u>
Value of the transaction	<u>\$172,174,047</u>

Proposed tangible benefits

16. When the Commission established the benefits policy in Public Notice 1989-109, its purpose was to allow the market to govern the transfer of broadcasting licences as part of ownership transactions, while still recognizing that broadcasting licences are public property and that any transaction must be in the public interest. The Commission generally expects applicants to make commitments to clear and unequivocal benefits when applying for authority to change the effective control of programming undertakings. Because the Commission does not solicit competing applications, the onus is on the applicant to demonstrate that its application is the best

possible proposal under the circumstances and that the benefits proposed are consistent with the size and nature of the transaction.

17. For television broadcasting undertakings, including conventional, pay and specialty undertakings, the Commission generally expects the contributions proposed to represent 10% of the value of the transaction as determined by the Commission (Public Notices 1999-97 and 2007-53). Tangible benefit expenditures for all television assets should be directed to the communities served by the undertaking and to the broadcasting system as a whole. Further, to be accepted as a benefit, the proposed expenditure must be directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction and should generally flow to third parties, such as independent producers.
18. Rogers proposed a tangible benefits package of 10% of the proposed value of the transaction. Given the value of the transaction, the value of the tangible benefits package amounts to \$17,217,405 (10% of \$172,174,047).
19. Rogers proposed to direct the benefits to the following projects and self-administered funds in the following proportions over five years:
 - Sportsnet Winter Games (58%), an independently produced Canadian amateur action sports event taking place in a different region of the country each year;
 - Digital Media Production Scholarships (15%), a scholarship fund for post-secondary institutions offering degrees in multimedia or digital media production; and
 - Amateur Sports Production (27%), a fund for the development of independent production of Canadian amateur sports programming.
20. The Commission has reviewed Rogers' proposal for tangible benefits. The Commission accepts the benefits relating to Digital Media Production Scholarships and Amateur Sports Production. However, the Commission is concerned with the proposed Sportsnet Winter Games initiative. Specifically, the Commission is concerned that the proposed expenditure would not meet the requirement of the benefits policy that benefits be directed to the communities served and to the broadcasting system as a whole given that a high proportion of the benefit funds would be devoted to non-programming expenses, that the programming resulting from the initiative would be short-lived and that it would exclusively benefit and be useable by Rogers. Furthermore, the Commission is not convinced that the proposed expenditure would be incremental to the ongoing responsibilities of the existing licensee, as required by the benefits policy, given that sports events tend to be very popular and that consequently such an initiative might be undertaken or realized in the absence of the transaction.
21. Accordingly, the Commission is of the view that the proposal does not provide sufficient benefits to the Canadian broadcasting system or the community served by

The Score as a national English-language service. The Commission therefore **directs** Rogers to submit an alternate proposal for approval by the Commission by **30 May 2013**.

Conditions of licence and licence term

22. Rogers applied for the renewal of The Score's licence for a seven-year period ending in 2019. To that end, it confirmed that it would abide by the standard conditions of licence for specialty Category A services set out in Broadcasting Regulatory Policy 2011-443.
23. Rogers also confirmed that it would continue to operate The Score under the same conditions of licence set out in the current licence aside from those replaced by the standard conditions of licence, with two exceptions. Specifically, Rogers proposed:
 - to increase the amount of analysis and interpretation (category 2(a)) and long-form documentary programming (category 2(b)) on The Score from 10% to 15% of these categories combined; and
 - that The Score no longer be required to break into live sports event programming every 15 minutes to present video highlights and sports results, but that it instead be required to do so at least once every hour.
24. The Commission has reviewed the proposed amendments and is of the view that they are unlikely to alter the nature of the service in a significant way. Further, the Commission notes that The Score's conditions of licence, even following the proposed amendments, will differentiate the service from mainstream sport services which operate under Category C licences. The Commission therefore considers that it would not be appropriate to deny the application for The Score to be renewed as a specialty Category A service and instead renew it as a specialty Category C service, as proposed by Eastlink. Further, the Commission notes Bell's comment regarding the definition of live sports programming but finds this to be out of the scope of the current proceeding as such a definition might equally apply to a wide range of programming services that are not parties to this proceeding.
25. In Broadcasting Regulatory Policy 2010-167 (the group-based policy), the Commission established a framework for the group-based licensing of private television services affiliated with large English-language Canadian broadcast ownership groups. In Broadcasting Decision 2011-447, the Commission gave Rogers a short-term renewal to allow the Commission to reassess the applicability of the group-based policy to Rogers and its commitments relating to CPE and programs of national interest. It also stated that if Rogers' asset mix should change to include new qualifying specialty or pay television services at any time during the new licence term, the Commission would expect Rogers to apply to adhere to the group-based policy.
26. The Commission considers that The Score is a significant asset and that as such it should be considered in concert with other Rogers services in the context of its next

licence renewal. Accordingly, the Commission is of the view that it would be appropriate to renew The Score's licence until 31 August 2014 to align its next licence renewal with that of other Rogers services.

Conclusion

27. In light of all of the above, the Commission **approves** the application (2012-1327-2) by Rogers Media Inc. on behalf of The Score Television Network Ltd. for authority to change the effective control of The Score Television Network Ltd. so that control is exercised by Rogers.
28. The Commission also **approves** the application (2012-1573-1) to renew the broadcasting licence for The Score and to amend the conditions of licence in effect under the current licence. The terms and **conditions of licence** are set out in the appendix to this decision.
29. Upon surrender of the current licence issued to The Score Television Network Ltd., a broadcasting licence will be issued to Rogers Media Inc., subject to the terms and conditions of licence set out in the appendix to this decision.

Employment equity

30. Because Rogers is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-447, 27 July 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2011-417, 12 July 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2010-562, 9 August 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Allocation of the transaction value in changes in the effective control of broadcasting undertakings – Information Bulletin*, Broadcasting Public Notice CRTC 2008-57, 30 June 2008
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007

- *The Score – Licence renewal*, Broadcasting Decision CRTC 2004-10, 21 January 2004
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2013-207

Terms, conditions of licence, expectations and encouragements for the specialty Category A service The Score

Terms

The licence will expire on 31 August 2014.

Conditions of licence

1. The licensee shall abide by the conditions for Category A services set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011, as amended from time to time.
2. In regard to the nature of service:
 - (a) The licensee shall provide a national English-language specialty Category A service that is dedicated to the broadcast of sports results and information in a video and text form.
 - (b) The licensee shall draw its programming exclusively from the following categories set out in item 6 of Schedule I of the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 1 News
 - 2 (a) Analysis and interpretation
(b) Long-form documentary
 - 3 Reporting and actualities
 - 4 Religion
 - 5 (a) Formal education and pre-school
(b) Informal education/Recreation and leisure
 - 6 (a) Professional sports
(b) Amateur sports
 - 7 Drama and comedy
 - (a) Ongoing dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - (g) Other drama
 - 8 (a) Music and dance other than music video programs or clips
(b) Music video clips
(c) Music video programs

- 9 Variety
- 10 Game shows
- 11 (a) General entertainment and human interest
(b) Reality television
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

(c) No more than 15% of the licensee's quarterly broadcast schedule shall be drawn from categories 2(a) and 2(b) combined.

(d) The licensee may broadcast live sports events coverage, provided that the hours devoted to such broadcasting do not exceed 15% of the licensee's quarterly broadcast schedule.

(e) All programming shall be presented in such a manner that sports results and information are continually displayed on some portion of the screen.

(f) The licensee shall break into all programming other than headline sports news broadcasts and live sports event programs at least once every 15 minutes to present video highlights as well as sports results and information in a format that includes both audio and video components.

(g) The licensee shall break into live sports event programming at least once an hour to present video highlights as well as sports results and information in a format that includes both audio and video components.

(h) No more than 10% of the licensee's quarterly broadcast schedule shall be drawn from category 7.

(i) No more than 10% of the licensee's quarterly broadcast schedule shall be drawn from categories 8(b) and 8(c) combined.

3. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs:
 - a) at least 75% of the broadcast day and at least 60% of the evening broadcast period.
 - b) at least 50% of the hours devoted to live sports event coverage during the prime time period.

For the purposes of this condition, the term "prime time period" shall mean the total number of hours included in the period from 6 p.m. to 12 midnight, Monday to Friday, and 12 noon to 12 midnight, Saturday and Sunday.

4. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program*

Expenditures by Canadian Television Stations, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC1993-93, 22 June 1993 and in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993:

- (a) In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 47.8% of the gross revenues derived from the operation of this service during the previous broadcast year.
 - (b) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to 5% less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous years under-expenditure.
 - (c) In each broadcast year of the licence term where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
 - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous years over-expenditure; and
 - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
 - (d) Notwithstanding paragraphs (b) and (c) above, during the licence term the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
5. The licensee may distribute separate regional programming in place of its national service to affiliated distribution undertakings, provided that the hours devoted to such regional programming do not exceed 10% of the licensee's quarterly program schedule.
- The licensee must file separate logs for each region and that regional programming must be logged under Program Class "REG".
6. The service approved hereby is designated as a Category A service.

For the purpose of these conditions:

The term “broadcast day” refers to the 24-hour period beginning at 6 a.m. each day or any other period approved by the Commission.

The terms “broadcast month,” “broadcast year,” “clock hour” and “evening broadcast period” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011, as amended from time to time.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011, as amended from time to time.