



Broadcasting Decision CRTC 2005-483

Ottawa, 6 October 2005

The Sports Network Inc.
Across Canada

*Application 2004-1556-4
Broadcasting Public Notice CRTC 2005-40
29 April 2005*

The Sports Network – Licence amendments

*The Commission **approves in part** an application to change the conditions of licence for The Sports Network (TSN) to permit it to broadcast programming from category 7 – Drama and comedy. The licensee is required, by **condition of licence**, to ensure that programming from category 7 comprises no more than 5% of any broadcast week, that all category 7 programming is Canadian, and that all category 7 programming has sports as its central theme. The Commission also **approves** the licensee's proposal to delete condition of licence 1(c) which states "The licensee shall not distribute feature length films about sports personalities, whether factual or fictional."*

*In addition, the Commission **approves** the request for licence amendments that will allow the licensee to avail itself of the incentive program for English-language Canadian television drama set out in Incentives for English-language Canadian television drama, Broadcasting Public Notice CRTC 2004-93, 29 November 2004.*

The application

1. The Commission received an application by The Sports Network Inc. (the licensee) to amend the broadcasting licence of the national English-language specialty programming undertaking known as The Sports Network (TSN).
2. The licensee proposed to change the conditions of licence that set out the nature of the service that TSN provides to permit it to broadcast programming from category 7 – Drama and comedy. The licensee proposed to limit the amount of programming from category 7 that it would broadcast to a maximum of 15% of the broadcast week. All category 7 programming would be related to sports. In addition, the licensee proposed to delete the current condition of licence 1(c) which states "The licensee shall not distribute feature length films about sports personalities, whether factual or fictional."

3. The licensee further requested licence amendments to allow TSN to participate in the English-language Canadian television drama incentive program set out in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004 (Public Notice 2004-93), by adding the following condition of licence:

In addition to the 12 minutes of advertising material during any clock hour in a broadcast day permitted by condition of licence, the licensee may broadcast such additional minutes of advertising material calculated in accordance with *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time.

4. The licensee also proposed to add the following preamble to its current condition of licence 3(a) in order to avail itself of the new flexibility with regard to Canadian program expenditure requirements set out in Public Notice 2004-93:

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 CRTC 1993-93, 22 June 1993, in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993, and in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time.

5. In support of its application, the licensee argued that adding a limited amount of sports-related drama to the TSN schedule was consistent with the service's mandate to showcase all aspects of sports. It further considered that approval of the application would allow it to play a role in supporting the creation of original Canadian sports-themed drama. The licensee also argued that adding drama would enrich the schedule of TSN and improve the service's ability to serve its audience. It considered that the 15% limit on category 7 programming it had proposed was consistent with the limits imposed on other sports specialty services, such as ESPN Classic Canada and the NHL Network, and that this limit would prevent TSN from becoming competitive with other specialty services.

Interventions

6. The Commission received interventions that either opposed or commented on various aspects of the application.

7. Two individuals strongly opposed granting authority to TSN to broadcast drama, arguing that TSN should focus on broadcasting sports and sporting events.
8. The other interveners raised a number of issues in connection with the addition of drama to TSN's schedule. The first issue related to possible limitations on the type or amount of drama that TSN could broadcast. Alliance Atlantis Communications Inc. (Alliance Atlantis) supported the addition of a limited amount of drama to the schedule of TSN provided that the drama was original and Canadian. Alliance Atlantis submitted that the amount of drama broadcast on TSN should not exceed 5% of the broadcast day. Quebecor Media Inc. stated that it would not oppose the application if TSN were limited to broadcasting drama that had been produced at least 15 years prior to broadcast.
9. Several interveners expressed concern that TSN did not make a commitment to broadcast a minimum level of Canadian drama. CHUM Limited (CHUM) considered that, absent such a commitment, TSN's application would not fulfil the Commission's objective of increasing the number of hours of Canadian drama available to Canadians. The Canadian Broadcasting Corporation (CBC) argued that, if there were no requirement to broadcast Canadian drama, there was no policy rationale to approve the application. The Canadian Film and Television Production Association (CFTPA) recommended that TSN be required to ensure that at least 50% of the drama that it broadcasts is Canadian.
10. Two interveners raised concerns about the effect that approval of the application could have on the rights market for non-Canadian drama. CHUM submitted that TSN could become a prominent bidder for non-Canadian drama and that this would further destabilize the marketplace for such programming. Alliance Atlantis argued that approval of the application as submitted would serve to increase competition for the broadcast rights for non-Canadian drama.
11. Intervenors also expressed concern that approval of the application would allow TSN to compete with conventional television stations. Global Television Network (Global) and the CBC argued that, if the application were approved, TSN would be able to offer a wide range of programming similar to that broadcast by conventional television stations. The CBC acknowledged that some sports-based services are permitted to broadcast drama, but submitted that those services are limited either by a very narrow nature of service condition of licence, or to specific subcategories of category 7 from which they can draw programming. Global submitted that other sports services had been permitted to broadcast drama in order to make their services more attractive to viewers and to drive the penetration of digital services.

12. The CFTPA also raised concerns about the portion of TSN's application that would permit it to take advantage of the incentives for the broadcast of Canadian drama set out in Public Notice 2004-93. The CFTPA argued that, since the Commission is unable to determine annual spending on Canadian drama by specialty services, it is not in a position to establish a baseline for measuring incremental expenditures to support the creation of original Canadian drama. As such, the CFTPA considered that the Commission was not in a position to approve TSN's request to participate in the drama incentive program.

Licensee's reply

13. In reply to the interventions, the licensee argued that the proposed amendments would not change the programming mandate of TSN. It noted that, unlike conventional television stations which offer general interest programming services, TSN is required, by condition of licence, to devote all of its programming to sports. The licensee indicated that it would be willing to accept a condition of licence specifying that all drama broadcast by TSN would have sports as its central theme. The licensee further indicated that, while it considered that its proposal to limit drama to 15% of the broadcast week was consistent with TSN's mandate to showcase all aspects of sports, it would be willing to limit drama to 10% of the broadcast week.
14. The licensee argued that it would not be appropriate to set a minimum amount of drama aired by TSN that must be Canadian. It submitted, however, that it would make every effort to program Canadian drama that has sports as its theme.
15. The licensee also addressed the CFTPA's contention that the Commission was not in a position to approve its request to participate in the drama incentive program since TSN was a specialty service. The licensee noted that, in Public Notice 2004-93, the Commission stated that specialty services could apply to participate in the program.

Commission's analysis and determinations

Addition of drama to TSN

16. The Commission considers that the addition of a limited amount of sports-related drama to the schedule of TSN would be consistent with TSN's mandate to provide a service "which shall consist of programming dedicated exclusively to all aspects of sports"¹
17. The Commission is, however, concerned that the amount of drama that the licensee has proposed could detract from TSN's primary role, which is to provide coverage of sports and to broadcast sporting events. Under its original proposal, TSN would be permitted to devote up to 15% of the broadcast week, or 25.2 hours, to drama. This would amount to an average of 3.6 hours of drama per day, all of which could be broadcast during evening prime time. Even a 10% weekly limit for drama would permit TSN to schedule as much as 16.8 hours of drama per week, or an average of 2.4 hours a day.

¹ See the appendix to *Licence renewal for The Sports Network*, Decision CRTC 2001-734, 29 November 2001.

18. The Commission is also concerned that the licensee has not made a specific commitment to broadcast a minimum amount of Canadian drama. The Commission considers that the absence of such a commitment is inconsistent with the Commission's goal of increasing the amount and quality of Canadian drama available to viewers. The Commission notes that, while the Category 2 sports services ESPN Classic Canada and the NHL Network have been authorized to broadcast drama with no requirement for minimum amounts of Canadian drama, those services have been licensed as narrow niche services and, as Category 2 services, are not guaranteed carriage by broadcasting distribution undertakings (BDUs) and have limited subscriber bases. TSN, on the other hand, is an analog service that is carried by BDUs across Canada and enjoys a high level of subscriber penetration. The Commission further considers that, if TSN were to choose to broadcast non-Canadian feature films, this could lead to increased competition for the acquisition of broadcast rights for such programming, without increasing the diversity of programming available to viewers.
19. In light of these concerns, the Commission considers that it would be appropriate to limit the amount of sports-related drama broadcast by TSN to a maximum of 5% of the broadcast week and to require that all drama broadcast be Canadian. The Commission notes that this approach would be consistent with that used for the for 22 specialty services renewed in 2004. In those cases, the Commission required those specialty services that wished to introduce drama programming for the first time to ensure that the drama be in keeping with their nature of service, and that the drama be exclusively Canadian.²
20. The Commission therefore **approves in part** the licensee's proposal to change its conditions of licence to permit TSN to broadcast programming from category 7 – Drama and comedy. The licensee is required by **condition of licence**, to ensure that programming from category 7 comprises no more than 5% of any broadcast week, that all category 7 programming is Canadian, and that all category 7 programming has sports as its central theme. The Commission also **approves** the licensee's proposal to delete condition of licence 1(c) which states "The licensee shall not distribute feature length films about sports personalities, whether factual or fictional."

Participation in the incentive program for television drama

21. In Public Notice 2004-93, the Commission announced an incentive program designed to increase the production and the broadcast of, the viewing to, and the expenditures on, high quality, original English-language Canadian drama programming. The Commission stated that a licensee who meets the criteria of the drama incentive program will be permitted to broadcast additional minutes of advertising, beyond the limits set out in applicable regulations or conditions of licence. The Commission specified that such a licensee must apply for a condition of licence in order to avail itself of the incentive program.

² See *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004, paragraph 27.

22. With respect to the concerns raised by the CFTPA about the eligibility of TSN to participate in the drama incentives program set out in Public Notice 2004-93, the Commission notes that provisions in the program with respect to the broadcast of original hours of drama as well as incentives to increase viewing to Canadian drama apply to specialty services. The additional flexibility related to at-risk investment in original Canadian drama is also applicable to specialty services such as TSN.
23. In light of the above, and the fact that the licensee will now be permitted to broadcast drama, the Commission **approves** the licensee's request for licence amendments that will allow TSN to participate in the English-language Canadian television drama incentive program set out in Public Notice 2004-93 by adding the following condition of licence:

In addition to the 12 minutes of advertising material during any clock hour in a broadcast day permitted by condition of licence, the licensee may broadcast such additional minutes of advertising material calculated in accordance with *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time.

24. The Commission further **approves** the licensee's proposal to add the following preamble to condition of licence 3(a) in order to avail itself of the new flexibility with regard to Canadian program expenditure requirements set out in Public Notice 2004-93. The revised condition of licence 3(a) reads as follows:

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 CRTC 1993-93, 22 June 1993, in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993, and in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time, the license shall, in each broadcast year, expend not less than 44% of the gross revenues derived from the operation of this service during the previous year, on the acquisition of and/or the investment in Canadian programs;

Secretary General

This decision is to be appended to the licence. It 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>

