



## Broadcasting Decision CRTC 2005-484

Ottawa, 6 October 2005

**Le Réseau des sports (RDS) inc.**  
Across Canada

*Application 2004-1560-6*  
*Broadcasting Public Notice CRTC 2005-40*  
*29 April 2005*

### **Le Réseau des sports – Licence amendments**

*The Commission **approves in part** an application to change the conditions of licence for Le Réseau des sports (RDS) 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.*

*In addition, the Commission **approves** the request for licence amendments that will allow the licensee to avail itself of the incentive program for French-language Canadian television drama set out in Incentives for original French-language Canadian television drama, Broadcasting Public Notice CRTC 2005-8, 27 January 2005.*

### **The application**

1. The Commission received an application by Le Réseau des sports (RDS) inc. (the licensee) to amend the broadcasting licence of the national French-language specialty programming undertaking known as Le Réseau des sports (RDS).
2. The licensee proposed to change the conditions of licence that set out the nature of the service that RDS 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 RDS would broadcast to a maximum of 15% of the broadcast week. All category 7 programming would be related to sports.
3. The licensee further requested licence amendments to allow RDS to participate in the French-language Canadian television drama incentive program set out in *Incentives for original French-language Canadian television drama*, Broadcasting Public Notice CRTC 2005-8, 27 January 2005 (Public Notice 2005-8), 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 original French-language Canadian television drama*, Broadcasting Public Notice CRTC 2005-8, 27 January 2005, as may be amended from time to time.

4. The licensee also proposed to add the following preamble to condition of licence 2(a) in order to avail itself of the new flexibility with regard to Canadian program expenditure requirements set out in Public Notice 2005-8:

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 original French-language Canadian television drama*, Broadcasting Public Notice CRTC 2005-8, 27 January 2005, 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 RDS schedule was consistent with 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 RDS 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 RDS from becoming competitive with other specialty services.

## **Interventions**

6. Intervenors raised a number of issues in connection with the addition of drama to the schedule of RDS. One issue was the possible negative impact it could have on the French-language broadcasting market. The Association des producteurs de films et de télévision du Québec (APFTQ) expressed concern that approval of the application could open the floodgates to similar applications by other French-language specialty services, which could ultimately undermine the Commission's policy that allows for one specialty service per programming genre and drastically reduce the diversity of programming available to Francophone viewers. The Canadian Broadcasting Corporation (CBC) argued that the French-language market is limited and that its maximum growth potential has essentially been reached. According to the CBC, enlarging the programming categories from which specialty services could broadcast would only serve to further fragment the audience.

7. Interveners also raised issues related to possible limitations on the type or amount of drama that RDS could broadcast. TQS inc. (TQS) argued that the Commission should limit RDS' authority to broadcast drama to non-dramatic feature length films about sports or sports personalities. It further submitted that RDS should be limited to acquiring programming which was at least seven years old. Quebecor Media Inc. stated that it would not oppose the application if RDS were limited to broadcasting drama that had been produced at least 15 years prior to broadcast.
8. Interveners also expressed concern that the licensee did not make a commitment with respect to the broadcast of a minimum level of Canadian drama. The CBC argued that, if there were no requirement to broadcast Canadian drama, there was no policy rationale to approve the application. The APFTQ argued that RDS should be required to ensure that at least 25% of the drama that it broadcasts is produced by Canadian independent production companies.
9. The APFTQ raised concerns about the effect that approval of the application could have on the rights market for non-Canadian drama. It considered that approval of the application would likely drive up the price of acquiring Hollywood feature films for French-language broadcasters since it would introduce a wealthy bidder to the marketplace.
10. The CBC was also concerned that approval of the application would allow RDS to compete with 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. It further noted that all of these services operate in Anglophone markets and are not competitive with RDS.

#### **Licensee's replies**

11. In reply to the interventions, the licensee argued that the proposed amendments would not change the programming mandate of RDS. It noted that, unlike conventional television stations which offer general interest programming services, RDS 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 RDS would have sports as its central theme. RDS, however, strongly objected to the proposal by TQS to restrict RDS to broadcasting non-dramatic feature-length films. The licensee considered that this approach would deprive RDS of the opportunity to play a role in the creation of original, Canadian, sports-themed drama programs. The licensee further indicated that, while it considered that its proposal to limit drama to 15% of the broadcast week was consistent with RDS' mandate to showcase all aspects of sports, it would be willing to limit drama to 10% of the broadcast week.

12. The licensee argued that it would not be appropriate to set a minimum amount of drama aired by RDS that must be Canadian. It submitted, however, it would make every effort to program Canadian drama that has sports as its theme.

## **Commission's analysis and determinations**

### **Addition of drama to RDS**

13. The Commission considers that the addition of a limited amount of sports-related drama to the schedule of RDS would be consistent with RDS' mandate set out in its nature of service condition of licence to provide a service "which shall consist of programming dedicated exclusively to all aspects of sports ...."<sup>1</sup>
14. The Commission is, however, concerned that the amount of drama that the licensee has proposed could detract from RDS' primary role, which is to provide coverage of sports and to broadcast sporting events. Under its original proposal, RDS 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 RDS to schedule as much as 16.8 hours of drama per week, or an average of 2.4 hours a day.
15. 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. RDS, on the other hand, is an analog service that enjoys a high level of subscriber penetration. The Commission further considers that, if RDS were to choose to broadcast non-Canadian feature films, this could lead to increased competition for the acquisition of broadcast rights for such programming in the French-language market, without increasing the diversity of programming available to viewers.
16. In light of these concerns, the Commission considers that it would be appropriate to limit the amount of sports-related drama broadcast by RDS 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

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<sup>1</sup> See the appendix to *Licence renewal for Le Réseau des sports*, Decision CRTC 2001-735, 29 November 2001.

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.<sup>2</sup>

17. The Commission therefore **approves in part** the licensee's proposal to change its conditions of licence to permit RDS 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.

#### **Participation in the incentive program for television drama**

18. In Public Notice 2005-8, the Commission announced an incentive program designed to increase the production and the broadcast of, the viewing of, and the expenditures on, high quality, original French-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.
19. 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 RDS to participate in the French-language Canadian television drama incentive program set out in Public Notice 2005-8 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 original French-language Canadian television drama*, Broadcasting Public Notice CRTC 2005-8, 27 January 2005, as may be amended from time to time.

20. The Commission further **approves** the licensee's proposal to add the following preamble to condition of licence 2(a) in order to avail itself of the new flexibility with regard to Canadian program expenditure requirements set out in Public Notice 2005-8. The revised condition of licence 2(a) reads as follows:

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<sup>2</sup> 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.

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 original French-language Canadian television drama*, Broadcasting Public Notice CRTC 2005-8, 27 January 2005, as may be amended from time to time, the licensee shall expend on the acquisition of and/or investment in Canadian programs, in each broadcast year, not less than 50% of the gross revenues derived from the operation of this service during the previous year;

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>*