



Broadcasting Decision CRTC 2013-333

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Route reference: Part 1 application posted on 20 February 2013

Ottawa, 11 July 2013

Bell Media Inc.
Across Canada

Application 2013-0320-6

The Comedy Network – Licence amendment

*The Commission **denies** an application by Bell Media Inc. to amend the broadcasting licence for the specialty Category A service known as The Comedy Network by changing certain conditions of licence. The changes would have reduced requirements for the exhibition of Canadian programming and increased the level of animated programming that The Comedy Network could broadcast.*

The application

1. The Commission received an application by Bell Media Inc. (Bell Media) to amend the broadcasting licence for the specialty Category A service known as The Comedy Network by changing conditions of licence 2(f), 2(h) and 3 set out in Appendix 16 to Broadcasting Decision 2011-444. The proposed changes would:
 - eliminate the current requirement that all programs drawn from categories 7(c) Specials, mini-series or made-for-TV features films and 7(d) Theatrical feature films aired on TV be Canadian programs (condition of licence 2(f));
 - increase the maximum level of programming that may be drawn from category 7(e) Animated television programs and films from 10% of the broadcast day to 25% of the broadcast month (condition of licence 2(h)); and
 - decrease the minimum level for exhibition of Canadian programs from 60% of the broadcast day and 65% of the evening broadcast period to 55% of the broadcast day and 50% of the evening broadcast period (condition of licence 3).

Interventions

2. The Commission received an intervention commenting on the application from Corus Entertainment Inc. (Corus). Corus submitted that, if the Commission approves Bell Media's application, it should afford similar flexibility to all specialty Category A services.

3. The Commission received opposing interventions from the Canadian Media Production Association (CMPA), the Writers Guild of Canada (Writers Guild), the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and TELETOON Canada Inc. (TELETOON Canada). The opposing interventions are addressed in the following sections of this decision.
4. Bell Media replied to the interventions, essentially reiterating the positions set out in its application.
5. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public proceedings."

Elimination of Canadian content requirements for programs drawn from categories 7(c) and 7(d)

Bell Media's position

6. Bell Media argued that the proposed change would be consistent with the greater flexibility granted to pay and specialty services in Broadcasting Public Notice 2008-100.
7. Bell Media further argued that limiting programming from categories 7(c) and 7(d) to Canadian programming places The Comedy Network at a competitive disadvantage with other specialty services, such as the Category B service BITE TV. Bell Media noted that BITE TV, which emphasizes comedy, is permitted to air both Canadian and non-Canadian programming from category 7(d).

Positions of interveners

8. The CMPA, supported by the Writers Guild, argued that Bell Media was resubmitting a request that had been previously denied by the Commission in Broadcasting Decisions 2010-655 and 2011-441. The CMPA noted that, in Broadcasting Decision 2011-441, the Commission stated that obligations for Canadian content for drama programming should remain in place to ensure continued programming diversity rather than the recycling of U.S. drama programming across Canadian channels. The CMPA considered that the Commission's rationale remains valid.
9. The CMPA further argued that BITE TV, which is a small independent Category B service with limited revenues, does not pose a competitive threat to The Comedy Network, which is a vertically integrated Category A service with much higher revenues.
10. ACTRA argued that BITE TV's nature of service requires it to provide a service that is quite different from that provided by The Comedy Network. ACTRA further submitted that, as a Category A service, The Comedy Network enjoys a position of privilege within the Canadian broadcasting system and that it should not be permitted to reduce requirements for the exhibition of Canadian programming in categories 7(c) and 7(d).

Commission's analysis and decisions

11. The Commission is of the view that the higher obligations for the exhibition of Canadian programming are an integral part of being a Category A service that enjoys genre protection and guaranteed carriage by broadcasting distribution undertakings. Such obligations serve to fulfill the objective set out in section 3(1)(d)(ii) of the *Broadcasting Act*.
12. As Bell Media indicated, the Commission's intent in Broadcasting Public Notice 2008-100 was to provide flexibility through the elimination of "limiting conditions of licence where the narrative description is sufficient to ensure that the service will not be directly competitive with any other Category A service and will remain true to its genre." However, the Commission considers that there is no evidence that this condition of licence has presented an unreasonable limitation on The Comedy Network or has negatively affected the service economically. The Commission's intent in imposing the condition of licence was to ensure that The Comedy Network would remain true to its genre and not, for example, transform into a movie-based service. The Commission is concerned that the amendment proposed by Bell Media could result in the addition of a significant number of Hollywood movies to The Comedy Network's schedule, particularly during the evening broadcast period.
13. With respect to competition with BITE TV, the Commission notes that BITE TV's nature of service describes it as being "devoted predominantly to short-form films shot on film, or video or created with computer animation" that are "Canadian and international cutting-edge short-form films, from 1 to 40 minutes in length." While there may be some overlap in programming between The Comedy Network and BITE TV or other services, BITE TV should not be in direct competition with The Comedy Network if it is operating according to its nature of service. If Bell Media is of the view that BITE TV or another service is competing directly with The Comedy Network, the appropriate remedy is for Bell Media to submit a complaint to the Commission.
14. In light of the above, the Commission **denies** Bell Media's proposal to amend condition of licence 2(f) for the Comedy Network by eliminating the requirement that all programs drawn from categories 7(c) specials, mini-series or made-for-TV features films and 7(d) Theatrical feature films aired on TV be Canadian programs.

Increase in the level of animated programming

Bell Media's position

15. Bell Media submitted that the proposed increase in the maximum amount of animated programming from 10% to 25% would provide it with greater flexibility and allow it to broadcast adult-targeted animated series such as *Family Guy*, *The Simpsons* and *South Park*. Bell Media was of the view that the proposed amendment would be consistent with Broadcasting Public Notice 2008-100 and stated that it would ensure

that all animated programming is targeted to adults, in accordance with its condition of licence 1(g).

16. Bell Media expressed concern that, in light of The Comedy Network's current restriction on animated programming, a service such as the specialty Category A service TELETOON could feasibly become a 100% comedy channel by only scheduling programming from category 7(e).

Positions of interveners

17. The CMPA, supported by the Writer's Guild, noted that the Commission denied a similar request by Bell Media in Broadcasting Decision 2011-444. It argued that the proposed change would be of no benefit to the Canadian animation community unless Bell Media made a commitment to ensure that the additional animation programming that The Comedy Network broadcast was Canadian. ACTRA was concerned that the request would downgrade The Comedy Network's programming requirements.
18. TELETOON Canada was concerned that increasing the allowable percentage of animation on The Comedy Network would make the service directly competitive with TELETOON.

Commission's analysis and decisions

19. Bell Media expressed concern about possible competition from TELETOON. The Commission notes, however, that there are significant limits on TELETOON's ability to compete directly with The Comedy Network. TELETOON has a commitment to provide a "safe haven" for young children throughout the day and must broadcast twelve hours of programming every weekday from 6:00 a.m. to 6:00 p.m. suitable for unsupervised viewing by young children. TELETOON may, therefore, air only children's comedy during the 12-hour daytime period. Since The Comedy Network is only permitted to air animated programs targeted to adults, TELETOON could only potentially compete for the adult animation audience during the evening period.
20. The Commission further notes that Bell Media's proposal to increase the levels of animated programming on The Comedy Network appears to be based on a desire to offer additional non-Canadian programming. In fact, the titles it cites in its application are all U.S. programs. Further, the U.S programming that Bell Media proposes to add is already available on other services, meaning that there would be no increase in the diversity of programming available to Canadians, only an increase in the duplication of programs across services.
21. In light of the above, the Commission considers that Bell Media has presented no clear evidence to demonstrate that there is unwarranted competition between The Comedy Network and TELETOON that would be remedied by the proposed amendment. The Commission also considers that the applicant has not demonstrated that there would be any significant increase in the diversity of programming available to Canadians or benefits to Canadian animation producers resulting from the proposed amendment.

22. Accordingly, the Commission **denies** the proposal by Bell Media to amend condition of licence 2(h) for The Comedy Network by increasing the maximum level of programming that may be drawn from category 7(e) Animated television programs and films from 10% of the broadcast day to 25% of the broadcast month.

Decrease in exhibition requirements for Canadian programming

Bell Media's position

23. Bell Media argued that its higher requirements for exhibition of Canadian programming mean that The Comedy Network is not protected from competition for the acquisition of foreign programming. As an example, Bell Media submitted that TVtropolis competes with The Comedy Network for the acquisition of foreign comedy-based strip programming while having lower Canadian content requirements than The Comedy Network.
24. Bell Media further argued that the proposed reduction was appropriate in that it would serve to harmonize the requirements of The Comedy Network with those of other specialty services and of conventional television stations. Bell Media also stated that the elimination of time credits for the broadcast of Canadian drama had made fulfillment of its Canadian content requirements more difficult.
25. In addition, Bell Media submitted that the lack of new comedy programs makes it increasingly difficult to find fresh Canadian programming to add to The Comedy Network's schedule. This results in more repeats of old "strip" programming.

Positions of interveners

26. Once again, the CMPA, supported by the Writer's Guild, noted that the Commission denied a similar request by Bell Media in Broadcasting Decision 2011-444. The CMPA noted that, in that decision, the Commission stated that it did not contemplate lower Canadian exhibition requirements for specialty services, or harmonizing all the obligations for television services.
27. The CMPA submitted that The Comedy Network has received many pitches for new Canadian comedy programs and series but has expressed little interest in acquiring them.
28. ACTRA objected to Bell Media's proposal, noting that The Comedy Network is a successful service that has played a tremendous role in the broadcasting system, offering Canadians a place to seek out the greatest in Canada's rich comic heritage. It was of the view that the change proposed by Bell Media would make a fundamental shift in The Comedy Network's orientation and identity.

Commission's analysis and decisions

29. The Commission agrees that The Comedy Network's exhibition requirements for Canadian programs (60% over the broadcast day and 65% in the evening) are higher

than other services cited in the application such as TELETOON (60% over the broadcast day and 60% in the evening) and TVtropolis (50% over the broadcast day and 50% in the evening.)

30. However, the Commission continues to be of the view that requirements for the exhibition of Canadian programming are particularly important for specialty Category A services. There have been no significant changes in the circumstances of The Comedy Network since a similar application was denied in Broadcasting Decision 2011-444. Further, the applicant has not demonstrated that there is a lack of available Canadian programming. In fact, the evidence submitted by interveners suggests that this type of programming is available or could be readily produced.
31. Accordingly, the Commission **denies** the proposal by Bell Media to amend condition of licence 3 for The Comedy Network by decreasing the minimum level for exhibition of Canadian programs from 60% of the broadcast day and 65% of the evening broadcast period to 55% of the broadcast day and 50% of the evening broadcast period.

Conclusion

32. In light of all of the above, the Commission **denies** the application by Bell Media Inc. to amend conditions of licence 2(f), 2(h) and 3 for The Comedy Network.

Secretary General