



## Broadcasting Decision CRTC 2007-384

Ottawa, 18 October 2007

### **Rogers Broadcasting Limited**

Across Canada

*Application 2007-0331-5, received 23 February 2007*

*Public Hearing in the National Capital Region*

*27 August 2007*

### **Sportsnet 2 – Category 2 specialty service**

*The Commission **approves** an application for a broadcasting licence to operate a new Category 2 specialty programming undertaking.*

### **Introduction**

1. Rogers Broadcasting Limited (Rogers) filed an application for a broadcasting licence to operate Sportsnet 2, a national, English-language Category 2<sup>1</sup> specialty service that would be devoted primarily to the coverage of soccer, cricket and rugby. The programming would include exclusive international soccer matches from professional leagues and tournaments. The service would also provide coverage of national Canadian teams, including junior programs, sports news, in-depth analysis or instructional programs. In addition, Rogers stated that no more than 10% of all programming broadcast during the broadcast year would be devoted to sports other than soccer, cricket and rugby, and that with the exception of soccer, cricket and rugby, no more than 5% of the broadcast year would be devoted to live coverage of any one particular sport. Finally, Rogers requested the authority to offer 10% of its programming content in high definition (HD) format.
2. The Commission has implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing Category 1 or analog pay or specialty television service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question. Where appropriate, in setting conditions of licence, the Commission prevents or limits the broadcast of specific types of programming to ensure that the service is not nor will become directly competitive with any existing Category 1 or analog pay or specialty television service.

---

<sup>1</sup> The Category 2 services are defined in Public Notice 2000-171.

3. The Commission received an intervention in opposition to this application from Asian Television Network International Limited (ATN). ATN is a licensed television broadcaster that owns and operates specialty television channels providing television programming in several South Asian languages across Canada. Rogers currently provides carriage of ATN's Cricket Plus channel. The Commission also received an intervention from CTVglobemedia Inc. (CTVgm) commenting on this application.

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

4. After considering the positions of the applicant and the interveners, the Commission finds that the issues to be determined in its evaluation of this application relate to whether the proposed service would be directly competitive with existing Category 1 or analog pay or specialty services, and to whether the proposed service should be prohibited from providing carriage of sports programming not set out in the proposed mandate for the service.

#### **Would Sportsnet 2 be directly competitive with existing Category 1 or analog pay or specialty services?**

5. ATN noted in its intervention that since Rogers provides carriage to ATN's Cricket Plus channel, it is privy to all business sensitive information about this service on an ongoing basis. ATN further noted that Cricket Plus, as a Category 2 service, has no guaranteed carriage, and argued that Rogers may no longer carry the service if it performs poorly in competition with the proposed Sportsnet 2 service.
6. CTVgm stated in its intervention that English-language viewers currently have access to ten Canadian and four non-Canadian services devoted exclusively to sports, and that the licensing of Sportsnet 2 would add to an already highly competitive environment with increasing audience fragmentation as consumers seek out more viewing options. CTVgm also noted that although the proposed service is modelled after the existing Fox Sports World Canada Category 2 service, important distinctions between the two relating to certain programming categories (in particular, those pertaining to sports news, in-depth analysis and instructional programs) could result in the proposed service being directly competitive with existing sports specialty services, unless Rogers were to ensure that programming from these categories is consistent with the proposed mandate of the service.
7. In its reply to ATN, Rogers stated that the proposed service would have a very limited impact on the demand for a niche cricket service like Cricket Plus. It added that although Sportsnet 2 would provide cricket coverage, it would also provide a special emphasis on soccer and rugby, making its programming offering more varied than that of Cricket Plus. Rogers argued that since Sportsnet 2 would not be able to provide the same level of cricket coverage as Cricket Plus, the proposed service would not serve the interests of the cricket enthusiast as effectively as Cricket Plus.

8. In its reply to CTVgm, Rogers committed to ensure that all programming on its proposed service would be consistent with the proposed mandate of the service, and noted that its application is entirely consistent with an approach already approved by the Commission. Rogers further noted that since the Commission's competitive test applies only to existing analog and digital Category 1 services, any comparisons with existing Category 2 services such as Fox Sports World Canada are inconsequential.
9. The Commission has reviewed Rogers' application and is satisfied that, consistent with the approach set out in Public Notice 2000-6, the proposed service would not be directly competitive with any existing Category 1 or analog pay or specialty service.

**Should Sportsnet 2 be prohibited from covering certain sports not included in its proposed mandate?**

10. In its intervention, CTVgm noted that Rogers is seeking significantly more programming flexibility for Sportsnet 2 than that afforded to Fox Sports World Canada. The intervener stated that while Fox Sports World Canada is prohibited from dedicating any coverage of the following men's sports: ice hockey, basketball, baseball and North American-style football, Rogers is proposing that Sportsnet 2 be prohibited from covering North American professional sports leagues (i.e., NHL for hockey, MLB for baseball, NBA for basketball, and CFL and NFL for football). CTVgm submitted that it had no objection to the added programming flexibility sought by Rogers, providing that it is consistent with the proposed nature of service. CTVgm further submitted that Sportsnet 2 should be required to adhere to a condition of licence identical to that of Fox Sports World Canada, which would prohibit it from providing any coverage (live or otherwise) of these same men's sports.
11. In its reply, Rogers stated that all of the proposed programming for Sportsnet 2 would be consistent with the proposed mandate of the service. In regard to the exclusion of programming relating to men's ice hockey, basketball, baseball and football, Rogers stated that it agreed in its application to a prohibition from covering any of the professional leagues from any of the above-noted sports, and that it is prepared to expand this commitment to a prohibition from covering the sports themselves.
12. The Commission is imposing a **condition of licence**, as set out in the appendix to this decision, reflecting Rogers' commitment to a prohibition from covering the following men's sports: ice hockey, basketball, baseball and North American-style football.

**Conclusion**

13. The Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. The Commission also notes that the licensing of this service would be consistent with the Commission's objective to institute a more flexible regulatory model and with its practice in recent years of licensing more sports specialty services and generally providing these services with greater programming flexibility. Accordingly, the Commission **approves** the

application by Rogers Broadcasting Limited for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking Sportsnet 2. The Commission also **approves** Rogers' request to offer 10% of its programming in HD format. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

#### **Related documents**

- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

*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>*

## Appendix to Broadcasting Decision CRTC 2007-384

### Terms and conditions of licence for the Category 2 specialty programming undertaking Sportsnet 2

#### Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- the applicant has entered into a distribution agreement with at least one licensed distributor; and
- the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 18 October 2010. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

The licence will expire 31 August 2014.

#### Conditions of licence

1. The licence will be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001.
2. The licensee shall provide a national, English-language Category 2 specialty service devoted primarily to the coverage of soccer, cricket and rugby. Programming will include exclusive international soccer matches from professional leagues and tournaments. The service will also provide coverage of national Canadian teams, including junior programs, sports news, in-depth analysis or instructional programs.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of Schedule I to 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
  - 5 (b) Informal education/Recreation and leisure
  - 6 (a) Professional sports

- (b) Amateur sports
    - 10 Game shows
    - 11 General entertainment and human interest
    - 12 Interstitials
    - 13 Public service announcements
    - 14 Infomercials, promotional and corporate videos
4. No more than 10% of all programming broadcast during the broadcast year shall be devoted to sports other than soccer, cricket and rugby.
  5. With the exception of soccer, cricket and rugby, no more than 5% of the broadcast year shall be devoted to live coverage of any one particular sport.
  6. The licensee shall not dedicate any coverage to the following men's sports: ice hockey, basketball, baseball and North American-style football.
  7. The licensee is authorized to make available for distribution, for a period of three years from the date of this decision, an upgraded version of its service in high definition (HD) format, provided that not less than 95% of the video and audio components of the upgraded and standard definition versions of the service are the same, exclusive of the commercial messages and of any part of the service carried on a subsidiary signal. The remainder of the programming making up the 5% allowance must be provided in HD format.
  8. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, the licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.

For the purposes of the conditions of this licence, including condition of licence no. 1, *broadcast day* means the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.