



Broadcasting Decision CRTC 2008-171

Ottawa, 13 August 2008

Rogers Broadcasting Limited
Across Canada

Application 2007-1685-5, received 26 November 2007
Public Hearing in the National Capital Region
13 May 2008

Baseball TV – 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 provide Baseball TV, a national, English-language Category 2 specialty service devoted to the coverage of baseball. The programming would consist of in-depth analysis and coverage of all aspects of baseball from the professional major leagues to minor and amateur teams.
2. Rogers proposed to broadcast live Major League Baseball (MLB) games comprising a maximum of 10% of its programming schedule and to include category 7 Drama and comedy among the programming categories from which it planned to draw its programming. The applicant specified that category 7 programming would be limited to no more than 15% of all programming broadcast during the broadcast week.
3. Rogers requested that it be permitted to achieve 100% closed captioning of its programming only by its sixth year of operation. The applicant also requested authorization to offer both a standard definition and a high definition (HD) version of Baseball TV.
4. The Commission did not receive any interventions in connection with this application.

Commission's analysis and determinations

5. 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 it become directly competitive with any existing Category 1 or analog pay or specialty television service.

6. In the present case, the Commission finds that the primary issues to be determined in its evaluation of this application are as follows:
 - whether the applicant's proposal to devote a maximum of 10% of the program schedule to the broadcast of live MLB games would make Baseball TV directly competitive with existing Category 1 or analog pay or specialty television services.
 - whether the applicant's proposal to broadcast programming drawn from category 7 is appropriate for a Category 2 service devoted to the coverage of baseball; and
 - whether the applicant's commitment to closed captioning is sufficient.

Broadcast of live Major League Baseball games

7. The Commission notes that Baseball TV's mandate is to provide programming focused on baseball. Further, the Commission is satisfied that there appears to be a great deal of baseball programming still available for broadcast and that Rogers has provided evidence of demand by its target audience for live baseball programming.
8. As pointed out by Rogers, there is no licensed Category 1 or analog pay or specialty television service devoted exclusively to the sport of baseball. Two of the three analog sports specialty services, The Sports Network and SportsNet (operated by The Sports Network Inc. and Rogers SportsNet Inc. respectively) are general interest services that offer a variety of programming from all sports and consequently have a limited number of hours available for baseball programming. The Score, operated by The Score Television Network Ltd., is devoted primarily to sports news and information and similarly has a limited number of hours for baseball.
9. According to Rogers, the 10% limit on live MLB games would ensure that Baseball TV would not compete directly with the existing analog sports specialty services. Rogers further maintained that its proposal is consistent with Broadcasting Decision 2006-250 in which the Commission authorized the Category 2 service Raptors NBA TV to broadcast live basketball games representing up to a maximum of 10% of its program schedule.
10. Rogers noted that its live programming commitment on Baseball TV relates specifically to MLB games and not to baseball games from other leagues. According to Rogers, the ability to carry live non-MLB games would broaden the scope and diversity of programming available on Baseball TV and further satisfy the needs of Canadian baseball fans. The applicant cited the Category 2 service known as The NHL Network (formerly known as The Hockey Network) as an example of where the Commission

restricted the amount of live programming from a specific professional league (i.e. the National Hockey League), but not the amount of live programming from other leagues that the service could air (Decision 2000-718).

11. In the circumstances, the Commission finds that granting Baseball TV the flexibility to broadcast live baseball games of the MLB would be appropriate in order to allow it to meet the needs of its target audience. The Commission is further satisfied that the proposed live baseball programming would not make Baseball TV directly competitive with analog general interest sports services because Baseball TV's focus will continue to be limited to baseball and baseball-related programming. The Commission considers that 10% of the broadcast year reasonably addresses the needs of the licensee for greater flexibility while meeting the concerns of analog specialty services regarding direct competition from Category 2 services.
12. A **condition of licence** authorizing Rogers to devote a maximum of 10% of its program schedule to the broadcast of live MLB games is set out in the appendix to this decision.

Broadcast of category 7 programming

13. The Commission is persuaded by Rogers' argument that viewers may have an interest in drama and documentary programming whose stories and characters revolve around the sport of baseball. The Commission considers that the limited amount of baseball-related drama would be consistent with the service's mandate to showcase all aspects of the sport of baseball. Accordingly, the Commission finds that Rogers' request to broadcast programming from category 7 is appropriate provided that category 7 programming comprises no more than 15% of the program schedule in any broadcast week and that all category 7 programming aired has the sport of baseball as its central theme. **Conditions of licence** to that effect are set out in the appendix to this decision.

Closed-captioning

14. Consistent with Broadcasting Public Notice 2007-54, the applicant agreed to closed caption 100% of all English-language programming it broadcasts. However, citing primarily technical issues associated with captioning live programming, the applicant requested that it be permitted to achieve 100% closed captioning only by the sixth year of operation.
15. In Broadcasting Public Notice 2007-54, the Commission recognized that there may be instances of technical malfunction, human error or other circumstances beyond the broadcaster's control, where captioning may not be available. The Commission indicated that the closed captioning requirement will be subject to exceptions that take into account the aforementioned instances as long as there is no evidence of a pattern.
16. In the present case, the Commission finds that the applicant failed to demonstrate that complying with a 100% closed captioning requirement would be too onerous. Accordingly, consistent with the framework set out in Public Notice 2007-54, the Commission requires the applicant to closed caption 100% of all English-language

programming it broadcasts beginning in its first year of operation. A **condition of licence** to that effect is set out in the appendix to this decision.

Standard definition and high definition

17. In Broadcasting Public Notices 2003-61 and 2006-74, the Commission stated that it would authorize the licensee of a Canadian pay or specialty service to make available an upgraded high definition version of its service, by means of an amendment to the licence of the existing service. This authority would be in effect for a term of three years.

18. The Commission further stated in Broadcasting Public Notice 2006-74:

Those services that are authorized to offer HD programming by way of licence amendment will remain subject to the requirement initially imposed in Public Notice 2003-61 that the programming on the analog or SD service and on the upgraded service be comparable, that is, not less than 95% of the video and audio components must be the same. Further, the Commission will require that all of the programming making up the 5% allowance be provided in HD.

19. In the circumstances, the Commission finds that Rogers' proposal to offer a high definition version of Baseball TV is appropriate. A **condition of licence** authorizing Rogers to make available for a period of three years from the date of this decision, a version of its service in high definition subject to the criteria specified in the condition is set out in the appendix to this decision.

Conclusion

20. The Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. 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 Baseball TV.

21. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Raptors NBA TV – Licence amendment*, Broadcasting Decision CRTC 2006-250, 22 June 2006
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001

- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000
- *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *The Hockey Network*, Decision CRTC 2000-718, 24 November and 14 December 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 2008-171

Terms and conditions of licence for the Category 2 specialty programming undertaking Baseball TV

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 13 August 2011. 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 programming service devoted to the coverage of baseball. The programming shall consist of in-depth analysis and coverage of all aspects of baseball from the professional major leagues to minor and amateur teams.
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
 - 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
- 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 dedicated to coverage of live Major League Baseball games.
 5. No more than 15% of the programming during the broadcast week shall be drawn from category 7. All category 7 programming aired shall have the sport of baseball as its central theme.
 6. The licensee is authorized to make available for distribution, for a period of three years from the date of this decision, a 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 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.
 7. The licensee shall caption 100% of its programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
 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.