



Broadcasting Decision CRTC 2009-115

Ottawa, 4 March 2009

Complaint by the Canadian Communications, Energy and Paperworkers Union of Canada against Canwest Media Inc.

In this document, the Commission sets out its findings on a complaint alleging that, by shifting elements of local program production from its television stations to broadcast centres in Vancouver, Calgary, Edmonton and Toronto, Canwest Media Inc. (Canwest) would contravene its obligations with respect to the broadcast of local programming and the Commission's local advertising policy. In summary, the Commission finds as follows:

- *It is unable to conclude that the implementation of the broadcast centres will put Canwest in contravention of the terms and conditions of its licences, the Commission's regulations and/or the local advertising policy.*
- *There is no evidence that Canwest is currently in contravention of its obligations to broadcast a minimum number of hours of local programming on its stations that have conditions of licence in this regard.*
- *The appropriate forum to deal with these concerns is the proceeding to deal with certain aspects of the licence renewal of private conventional television stations announced in Broadcasting Notice of Consultation 2009-70.*

Introduction

1. On 9 November 2007, the Communications, Energy and Paperworkers Union of Canada (CEP) filed a complaint against CanWest MediaWorks Inc., now known as Canwest Media Inc. (Canwest). The CEP submitted that, by shifting elements of local program production from its television stations to broadcast centres in Vancouver, Calgary, Edmonton and Toronto (the Broadcast Centres), Canwest would contravene its obligations with respect to the broadcast of local programming and the Commission's local advertising policy. The local advertising policy, which was first set out in Public Notice 1988-131, prohibits access to a local television advertising market unless the broadcaster provides local programming to that market.
2. Canwest replied to the complaint on 12 December 2007, and the CEP subsequently responded to Canwest in a letter dated 9 January 2008.
3. Determinations on the CEP complaint were set out in a letter dated 28 February 2008 signed by Mr. Michel Arpin, the Commission's Vice Chairman, Broadcasting. In the letter Mr. Arpin stated that he was unable to conclude that Canwest's plan to establish broadcast centres would put Canwest in contravention of the terms of its licences, the Commission's regulations and/or the local advertising policy. The letter also stated that the appropriate forum for the discussion of these issues would be the upcoming licence renewal proceeding for Canwest's television stations.

4. The CEP sought leave to appeal this determination to the Federal Court of Appeal. In its determination denying leave to appeal, the Federal Court of Appeal found that the letter signed by Vice-Chairman Arpin did not constitute a decision of the Commission for the purposes of section 31(2) of the *Broadcasting Act* and therefore could not be appealed to that court.¹
5. On 6 August 2008, the CEP sent a letter to the Commission asking for *de novo* consideration of its original complaint, followed by another letter dated 3 September 2008 that provided additional evidence in support of its position. Canwest replied to the CEP on 3 October 2008 and the CEP sent a final letter of response to Canwest on 18 November 2008.
6. In this decision, the Commission sets out its determinations on the issues raised by the CEP.
7. After examining the submissions by the CEP and Canwest, the Commission finds that the issues to be determined are as follows:
 - Does Canwest's use of the Broadcast Centres constitute a contravention of the terms and conditions of Canwest's television licences and/or the Commission's policy on the broadcast of local advertising?
 - Is Canwest currently in contravention of its local programming requirements?
 - Should the Commission hold a public hearing at the earliest possible date to consider these matters?

Does Canwest's use of the Broadcast Centres constitute a contravention of the terms and conditions of Canwest's television licences and/or the Commission's policy on the broadcast of local advertising?

Positions of parties

8. In its complaint the CEP alleged that, if Canwest were to shift its local stations' program production to the Broadcast Centres, Canwest would contravene the terms and conditions of its licences and/or the Commission's regulations and local advertising policy in the following ways:
 - by moving the origination of the local news programs, Canwest would be in breach of its conditions of licence for CHEK-TV Victoria, CHCA-TV Red Deer and CHCH-TV Hamilton and the commitments of its other stations;
 - by transferring programming responsibilities and production capacity, local stations would effectively operate as rebroadcasting transmitters;

¹ CEP vs Canwest MediaWorks Inc. 2008 FCA 247

- by yielding control of the stations' program schedules to Broadcast Centres that are not licensed as network operators;
 - by redistributing a programming service from third-party Broadcast Centres without alteration, Canwest's stations would be acting as unlicensed broadcasting distribution undertakings;
 - by allowing Canwest to collect local advertising revenue when it has reduced its stations' ability to present local programming.
9. Canwest stated that the allegations set out above were incorrect because control of and responsibility for the broadcasts will remain with the local television station. Canwest submitted that the decision to move some production elements (for example, camera work, lighting, microphone levels, generation of virtual sets, physical assemblage of news run-downs) to the Broadcast Centres would not, in any way, abrogate its individual licences or take decision-making capabilities away from the local stations.
10. Canwest further submitted that, while the Broadcast Centres will control technical production support, all material decisions regarding the content and presentation of the newscasts, with the exception of set design, will continue to occur at the local level, as will local news gathering.

Commission's analysis and determinations

11. After examining the submissions of the parties, the Commission is of the preliminary view that, while certain technical aspects of newscasts will be moved to the Broadcast Centres, control over the content of those newscasts will remain with the local stations themselves. However, it is difficult to make a final determination on the complaint, either confirming the CEP's allegations or supporting Canwest's assertions, until such time as the Broadcast Centres are fully implemented.
12. In the absence of such evidence to support the CEP's allegations, the Commission is unable to conclude that the implementation of the Broadcast Centres will put Canwest in contravention of the terms and conditions of its licences, the Commission's regulations and/or the local advertising policy.

Is Canwest currently in contravention of its local programming requirements?

Positions of parties

13. The CEP submitted that Canwest is now in breach of the terms and conditions of its television licences with respect to local programming. The CEP further noted that, on 13 November 2008, Canwest laid off 200 employees in broadcasting positions, including anchors, directors, writers, editors, producers, artists, studio cameras operators, engineers and many other positions.

14. Canwest for its part, stated that its local television stations have not only abided by their commitments and conditions of licence in every year of the licence term, but have exceeded their obligations as they relate to local programming and news exhibition in most markets.

Commission's analysis and determinations

15. In Public Notice 1999-97, the Commission removed quantitative obligations for amounts of local programming, eliminated local news requirements for private conventional television stations, and concluded that sufficient market incentives exist to ensure that audiences continue to receive local news from a variety of sources without regulatory requirements.
16. In accordance with this approach, the majority of Canwest's stations have commitments for local programming that have been noted in renewal decisions, but there is no requirement, in the form of a regulation or condition of licence, that the commitments be fulfilled. However, on an exceptional basis, of the stations affected by the Broadcasting Centres, CHEK-TV Victoria and CHCH-TV Hamilton have conditions of licence requiring a minimum number of hours of local programming.² CHCA-TV Red Deer also has a condition of licence requiring that it ensure that 75% of its local programming is local Red Deer programming³ but no condition of licence requiring a minimum number of hours of local programming.
17. With respect to the conditions of licence requiring a minimum number of hours of local programming, the Commission conducted a review of Canwest's program logs for the 2007-2008 broadcast year, which Canwest is required to file with the Commission pursuant to section 10(3) of the *Television Broadcasting Regulations, 1987*. This review confirmed that CHEK-TV and CHCH-TV exceeded the minimum number of hours of local programming required by their respective conditions of licence. Accordingly, the Commission finds that there is no evidence that Canwest is currently in contravention of its conditions of licence to broadcast a minimum number of hours of local programming on these stations.
18. The Commission also notes that the program logs indicate that virtually all of Canwest's other stations are fulfilling or exceeding their local programming commitments. Only one station, CIHF-TV Halifax, indicated a slight shortfall in fulfilling its local programming commitments for the 2006-07 broadcast year. However, CIHF-TV subsequently filed corrected logs indicating that it had met its local programming commitments in the 2006-2007 broadcast year.

² See Decision 2001-458-14 for CHEK-TV and Decision 2001-458-4 for CHCH-TV.

³ See Decision 2007-168.

19. The Commission is sensitive to the fact that changes in Canwest's broadcasting operations have resulted in a number of job losses with a significant negative impact on the employees involved. However, these developments do not have a direct bearing on a licensee's compliance, since staffing decisions with regard to hiring and layoffs are not addressed in the Commission's regulations or in conditions of licence affecting the Canwest television stations.

Should the Commission hold a public hearing at the earliest possible date to consider these matters?

Position of parties

20. The CEP submitted that the Commission must consider the Broadcast Centres and their implications on local programming at a public hearing that is separate from and occurs before the licence renewals of the Canwest stations in order to give this issue the serious consideration that it merits.
21. Canwest argued that a public hearing to consider this matter is not warranted. Canwest is of the view that it is in compliance with the Commission's regulations, policies and its conditions of licence. Canwest further submitted that, with the implementation of the Broadcast Centres, its capacity to cover late-breaking local events is actually strengthened.

Commission's analysis and determinations

22. In Public Notice 1999-97, the Commission stated that all licensees will be required to demonstrate at licence renewal time how they are meeting the demands and reflecting the particular concerns of their local audiences. Should it determine that licensees have failed to respond to legitimate community needs, the Commission indicated that it would take appropriate action at that time, such as imposing specific minimum requirements by conditions of licence.
23. Given that there is no evidence that Canwest is currently in contravention of its local programming requirements, the Commission finds that there is no reason to hold a separate public proceeding to deal with this matter. In Broadcasting Notice of Consultation 2009-70, the Commission identified the appropriate contributions to Canadian programming, including local programming, as one of the key issues to be discussed at the conventional television licence renewal hearing scheduled to begin on 27 April 2007. The Commission considers that this proceeding will provide an appropriate public forum for the CEP to express its concerns regarding the impact of Canwest's Broadcast Centres on local programming.

Secretary General

Related documents

- Broadcasting Notice of Consultation CRTC 2009-70, 13 February 2009

- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Policy concerning local television advertising*, Public Notice CRTC 1988-131, 5 August 1988

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