



Broadcasting Decision CRTC 2010-214

Route reference: 2009-437

Ottawa, 14 April 2010

Canadian Broadcasting Corporation
Across Canada

Application 2009-0701-6, received 1 May 2009

bold – Licence amendment

*The Commission **denies** the application by the Canadian Broadcasting Corporation (CBC) to amend the broadcasting licence for its Category 1 specialty service known as **bold** in order to change the condition relating to its nature of service.*

*The Commission directs the CBC to submit, within 30 days of the date of this decision, an alternate programming proposal for **bold** that will ensure that the majority of the programming is reflective of the living realities of rural Canadians, the nature of service is sufficiently specific and representative of the programming strategy and the service is non-competitive with any existing specialty services.*

Introduction

1. In Decision 2000-453, which approved the licensing of Land and Sea (subsequently rebranded as Country Canada), the Commission set out the following nature of service as a condition of licence:

The licensee shall provide a national English-language Category 1 specialty television service for rural Canadian families, with a focus on adults 25-54. The service will provide information, interaction and entertainment from a rural perspective.

For the purposes of this condition, “rural Canadians” shall be defined as individuals who live outside of the large urban centres, in small communities, and who predominantly make their living from the land and sea and/or through businesses that are directly associated with those that do.

2. On 26 October 2007, the Canadian Broadcasting Corporation (CBC) advised the Commission of its plan to rebrand Country Canada as **bold** and to modify its program schedule to focus on high-end drama programming and the performing arts. The CBC asserted that this change could be made without amending the nature of the service.

3. On 27 November 2007, the CBC was advised that a departure from Country Canada's current nature of service requiring it to provide a television service for rural Canadians from a rural perspective would require Commission approval of an application to amend its condition of licence to that effect.
4. Following the rebranding of Country Canada as bold in March 2008, an exchange of correspondence between the Commission and the CBC ensued in an attempt to clarify whether the new programming format complied with the nature of service condition. The CBC asserted that the programming was consistent with the nature of service definition. Specifically, in a letter dated 28 November 2008, the CBC maintained that the service continued to be consistent with the niche format in which it was licensed. As part of its rationale, the CBC noted the following:
 - The service, though originally intending to commission and develop original programming, never achieved the penetration and revenue projections and so has had to depend on off-the-shelf programming that is from a rural perspective. Consequently, the overall schedule has never been from a rural perspective.
 - In the information age, where one lives is less of a factor and a rigid view of bold's nature of service is inappropriate and will not allow bold to be relevant, attract or even retain television viewers.
 - The results of a CBC-commissioned Ipsos Reid survey show that rural Canadians value bold.
 - MenTV is the only other service to have a nature of service with a requirement to provide programming from a particular perspective.
5. The CBC stated that if the Commission did not share its view, it would have no other option than to file an application to amend bold's nature of service.
6. This response led the Commission to conclude that the CBC's actions appeared to negatively impact the integrity of the licensing process as the service was originally approved to provide a particular type of programming for a particular underserved audience, which, in the view of the Commission, it was no longer doing. The Commission also considered that the programming changes appeared to be inconsistent with the Commission's policy on program genre exclusivity set out in Broadcasting Public Notice 2008-100. As a result, as announced in Broadcasting Notice of Consultation 2009-132, the Commission called the CBC to a hearing in order to inquire into, hear and determine these matters.
7. On 1 May 2009, the CBC filed a letter with the Commission in which it stated that it did not contest the Commission's preliminary view that bold's programming may be inconsistent with its nature of service and applied for an amendment to its nature of service condition. On 22 May 2009, the Commission suspended the public hearing pending the disposition of the application.¹

¹ Broadcasting Notice of Consultation 2009-132-1.

8. In its application, the CBC proposed to amend the broadcasting licence for its Category 1 specialty service known as bold in order to replace the condition relating to its nature of service with the following:

The licensee shall provide a national English-language Category 1 specialty television service for rural Canadians. The service will provide information, interaction and entertainment.

9. The CBC provided the following rationale for its application:
- Like other Category 1 specialty services, bold has neither the subscriber base nor the revenues to create any significant amount of original content as contemplated in its original application and thus it must rely almost entirely on off-the-shelf programming that is from a rural perspective.
 - There is insufficient programming from a rural perspective to program the service.
 - The service will not be economically viable if the nature of service is not amended to remove the reference to programming from a rural perspective.
10. The CBC stated that it was of the view that it could continue to enhance the value of the service for rural Canadian families with the proposed nature of service definition and suggested that it would be reasonable for the Commission to set an expectation that the programming offered be from a rural perspective and to call upon it to explain how it had met this expectation at bold's next licence renewal. The CBC also indicated that it was willing to accept an expectation that no less than 10% of its programs consist of Canadian programming for rural Canadians.
11. The CBC further stated that should the Commission conclude that bold's programming might be directly competitive with analog or Category 1 specialty services, it would be prepared to accept a condition of licence requiring it to devote no more than 15% of all programming broadcast during the broadcast year to category 8(a) Music and dance other than music video programs and clips.
12. The Commission received interventions commenting on the application by Bell Aliant Regional Communications, Limited Partnership and Bell Canada (Bell) and by the English-Language Arts Network of Quebec (ELAN). The Commission also received interventions in opposition to the application by the Independent Broadcasters Group (IBG)² and Quebecor Media Inc. (QMI). The interventions and the applicant's reply are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

² This group includes the following members: Aboriginal Peoples Television Network Incorporated, Channel Zero Inc., Ethnic Channels Group Limited, Fairchild Television Ltd., Stornoway Communications Limited Partnership and S-VOX Group of Companies.

13. Having examined the application, the interventions and the applicant's reply in light of applicable policies and regulations, the Commission considers that the issues to be determined are as follows:
- Would approval of the amendment allow bold to morph into a general interest specialty service?
 - Would approval of the amendment allow bold to be directly competitive with existing analog and Category 1 specialty services?
 - Would approval of the amendment undermine the Commission's licensing regime?
14. The Commission notes that ELAN's intervention is outside the scope of this proceeding.

Would approval of the amendment allow bold to morph into a general interest specialty service?

Submissions

15. The IBG submitted that bold is a general interest service, not the niche programming service it was licensed to be. The IBG noted that in Broadcasting Decision 2008-251, the Commission denied an application for a broadcasting licence to operate a Category 2 specialty programming undertaking that would have offered a general interest television service providing high definition programming drawn from a wide variety of programming categories.
16. QMI was of the view that the proposed amendment would allow bold to morph into a service similar to a conventional television station and submitted that bold was already not respecting its mandate.
17. In reply, the CBC noted that it had concluded several years ago that there was no evidence to suggest that rural Canadians did not enjoy the same genres of programs as urban Canadians and decided then to rebrand Country Canada into bold to provide rural Canadians with the types of programs they want. The CBC cited the increase of subscribers to the service in rural areas since the rebranding as proof of the interest these audiences have in bold.

Commission's analysis and determinations

18. The Commission notes that it defined a specialty service in Public Notice 1986-199 as "a narrowcast television programming [service] designed to reflect the particular interests and needs of different age, language, cultural, geographic or other groups in Canada." It added that the "specialty services so envisioned could consist of what is commonly known as 'theme or vertical' programming material."

19. With respect to bold, the Commission notes that the service can currently draw from all program categories with the exception of categories 3 Reporting and actualities, 4 Religion, 8(b) Music video clips, 8(c) Music video programs and 15 Filler programming. In the Commission's view, this flexibility coupled with a nature of service definition without the requirement that programming be from a rural perspective would not ensure a sufficiently narrow focus for bold to be considered a specialty service. Further, the Commission notes that the programming schedule posted on bold's website for the month of December 2009 contained few of the types of programs identified by the CBC in its application as examples of programs for rural Canadians. The licensee's own description of bold as being "home to the world's best performing arts, intelligent drama and daring comedy" does not give any hint that the purpose of this service is to serve rural Canadians as defined in Decision 2000-453.
20. The Commission therefore concurs with the IBG and QMI that removing the requirement that bold's programming be from a rural perspective would allow the CBC to continue to include in its program schedule all genres of programming, as in the case of a conventional television undertaking that is not licensed to serve a particular segment of viewers or offer niche programming. While the CBC may be correct in its assumption that rural Canadians enjoy the same genres of programming as urban Canadians, the Commission is of the view that the offer of programming from a rural perspective ensures that the programs are reflective of the lifestyles and cultural references of rural Canadians. Without this requirement, the overall programming may be enjoyed by rural Canadians but may not be reflective of their reality and therefore would not be considered niche programming.

Would approval of the amendment allow bold to be directly competitive with existing analog and Category 1 specialty services?

Submissions

21. The IBG was of the view that bold is competitive with existing Category 1 and analog specialty services, contrary to the one-per-genre policy recently confirmed by the Commission in Broadcasting Public Notice 2008-100. Specifically, the IBG submitted that bold was seeking to provide a combination of niche programming genres that was already available through existing services such as Bravo!, Showcase, The Comedy Network, TSN, Sportsnet and The Score.
22. Bell noted that the Commission reiterated in Broadcasting Public Notice 2008-100 that the limitations on the program categories that services may draw from are designed to ensure that discretionary services continue to operate within the genres for which they were licensed and consequently do not become directly competitive with other existing analog and Category 1 specialty services. It requested that the Commission confirm whether or not bold is contravening the policy on genre exclusivity.
23. In reply, the CBC noted that unlike the specialty services with which the IBG claimed bold was competitive, bold has a mandate to serve rural Canadians. The CBC also noted that none of the programming services which the IBG alleged would be harmed by the

“competitive” character of bold filed a complaint or an intervention as part of this process.

Commission’s analysis and determinations

24. The Commission notes that in addition to the nature of service condition, bold must comply with the following conditions:
 - no more than 10% of all programming broadcast during each broadcast week shall be devoted to subcategory 7(d) Theatrical features films aired on TV;
 - no more than 10% of all programming broadcast during each broadcast year shall be devoted to subcategories 6(a) Professional sports and 6(b) Amateur sports; and
 - no more than 10% of all programming broadcast during each broadcast month shall also be broadcast on the CBC during the same broadcast month.
25. In the Commission’s view, the current limitation on amateur and professional sports programming is sufficient to prevent bold from becoming competitive with existing Canadian sports specialty services.
26. However, the Commission notes that the CBC’s description of bold’s programming shares similarities with the nature of service of Showcase, an all-fiction programming service consisting of independently produced movies, drama, comedy and mini-series from Canada and around the world.³ Additionally, Showcase is subject to a condition of licence requiring it to devote a minimum of 95% of all the programming broadcast to programming drawn from categories 7 Drama and comedy, 12 Interstitials, 13 Public service announcements, 14 Infomercials, promotional and corporate videos and 15 Filler programming.
27. The Commission also notes similarities between the CBC’s description of bold’s programming and the nature of service of Bravo!, a 24-hour service consisting of performance and drama programming, as well as documentary and discussion. In its original licensing decision,⁴ Bravo! is described as focussing on the performing arts while offering a mix of dance, music, opera, documentary, cinema, visual art and discussion programs from Canada and abroad.
28. Analysis of bold’s programming schedule from December 2009 to January 2010 demonstrates that more than half of its weekly schedule is drawn from category 7. The Commission also notes that a portion of the weekly schedule for that same period consisted of programs from category 8(a), programming that is offered by Bravo! in moderate amounts.

³ See Decision [94-280](#).

⁴ See Decision [94-281](#)

29. Accordingly, if the information, interaction and entertainment programming offered on bold were no longer required to be from a rural perspective, the Commission is of the view that bold would be competitive with Showcase and Bravo! The Commission also notes that when compared to Showcase and Bravo!'s respective natures of service and conditions of licence, the CBC's proposal for bold does not correspond to the definition of a specialty service that provides niche programming. Further, as noted above, bold's only restriction for category 7 is that no more than 10% of each broadcast week be devoted to theatrical feature films. In the Commission's view, approving the CBC's application would equate to indicating that this programming genre can sustain competition and that the Commission would consider applications for new services.
30. Finally, as for the CBC's submission that the absence of complaints or interventions by the licensees of specialty services is proof that bold is not competitive with these services, the Commission notes that the absence of complaints does not relieve the Commission of its responsibilities of ensuring that the genre exclusivity policy is strictly maintained and assessing licensees' compliance with their regulatory obligations.

Would approval of the amendment undermine the Commission's licensing regime?

Submissions

31. The IBG submitted that approval of the application would undermine the integrity of the Commission's licensing process for Category 1 services because it would allow the CBC to continue to offer a general interest programming service, contrary to the Commission's policies respecting discretionary services. It further submitted that the CBC's willingness to add an expectation to its licence indicating that it committed to devote 10% of its programs to programming for rural Canadians meant that bold would continue to be a general interest service. It added that the only way to ensure that bold offered a niche, narrowcast specialty service that is truly for rural Canadians was to maintain its obligation to provide programming from a rural perspective.
32. QMI was also of the view that approval of the application would undermine the licensing regime and added that the CBC neither explained how its application would benefit the Canadian broadcasting system nor how it would add diversity by maintaining an exclusive genre. Finally, QMI submitted that the CBC's proposed amendment appears to be based on the assertion that the service has insufficient audience to sustain it. In its view, if there is no room for such a service, "the market has spoken."
33. Bell noted that the CBC was granted a licence for a Category 1 service following a competitive process on the basis that it would feature programming of particular interest to Canadians residing in rural and fishing communities. It further noted that the Commission had determined at the time that these communities were underserved and had consequently approved the service with a Category 1 mandatory carriage status. Bell submitted that with the change in focus of the service, the basis for a Category 1 status no longer existed and suggested that if the Commission wished to approve the CBC's application, it should designate bold as a Category 2 service operating in a competitive genre and consequently bold should no longer qualify for mandatory carriage.

34. The CBC rejected the notion that approval of the amendment would undermine the integrity of the Commission's licensing process. It contended that the amendment was intended to provide clarity on the fact that the service was originally licensed as a service for rural Canadians and that it remained a service for rural Canadians.
35. In response to Bell's suggestion that if the amendment were granted, bold should be designated as a competitive service and lose its mandatory carriage rights, the CBC argued that such a decision would significantly impair its bargaining power in negotiations with Bell and that given bold's heavy reliance on direct-to-home carriage, the financial opportunity for Bell and the adverse consequences for bold would be significant.
36. Finally, in response to QMI's intervention, the CBC defended the merit of its application by stating that it would be senseless to deny its request for amendment on the basis that the market has no interest for this type of service when rural Canadians clearly enjoy bold in its current form.

Commission's analysis and determinations

37. In the Commission's view, approving the CBC's application as filed would negatively impact the integrity of the licensing process since the proposed nature of service is too broad to ensure that bold provides programming of particular interest to rural Canadians in accordance with its original licensing decision. Furthermore, as determined above, the proposed nature of service definition would not prevent bold from being competitive with existing specialty services and could allow bold to become a general interest specialty service, which is contrary to the purpose of licensing specialty services.
38. With respect to Bell's intervention, the Commission finds that bold's programming does not meet the criteria for a competitive programming genre identified in Broadcasting Public Notice 2008-100. As stated by the CBC in its letter of 28 November 2008, the service never reached the projected revenues, the popularity of the genre has not been demonstrated, programming availability is limited and for the time being, bold is occupying a unique genre (i.e. provision of programming from a rural perspective). None of the criteria have been met to justify the introduction of competition in this programming genre.

Conclusion

39. In light of the above, the Commission **denies** the application by the CBC to amend the broadcasting licence for its Category 1 specialty service known as bold in order to replace the condition of licence relating to its nature of service.
40. However, the Commission notes the CBC's contention that it faces challenges with respect to the availability of off-the-shelf programming that is from a rural perspective and that the service has limited financial resources to produce original content which serves this purpose. Therefore, the Commission is of the view that it would be acceptable

for the CBC to reposition bold's programming strategy to address these challenges while maintaining its orientation as a service for rural Canadians that is truly reflective of their interests and realities. Further, notwithstanding rural Canadians' interest in drama programming and the performing arts, the Commission reminds the licensee that Showcase and Bravo! were licensed to provide these types of programs and that these programming genres remain protected from competition.

41. Accordingly, the Commission directs the CBC to submit, within 30 days of the date of this decision, an alternate programming proposal for bold acceptable to the Commission that will ensure that the following requirements are met:
 - the schedule includes programming that is reflective of the living realities of rural Canadians;
 - the nature of service is sufficiently specific and representative of the programming strategy; and
 - the service is non-competitive with any existing specialty services.
42. The Commission notes that the public hearing suspended in Broadcasting Notice of Consultation 2009-132-1 will remain on hold pending the disposition of the application to be submitted.

Secretary General

Related documents

- Broadcasting Notice of Consultation CRTC 2009-132-1, 22 May 2009
- Broadcasting Notice of Consultation CRTC 2009-132, 11 March 2009
- *Canada HD Network – Category 2 specialty service*, Broadcasting Decision CRTC 2008-251, 4 September 2008
- *Regulatory framework for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Land and Sea – A new specialty channel*, Decision CRTC 2000-453, 14 December 2000
- *Bravo! – Approved*, Decision CRTC 94-281, 6 June 1994
- *“Showcase” – Approved*, Decision CRTC 94-280, 6 June 1994

- *Call for applications for network licences to offer Canadian specialty programming services, Public Notice CRTC 1986-199, 13 August 1986*

This decision 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>.