



Broadcasting Decision CRTC 2010-710

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Route reference: 2010-379

Ottawa, 24 September 2010

Rogers Broadcasting Limited
Across Canada

Application 2009-1271-8, received 17 September 2009

Allocation of tangible benefits associated with the change in ownership of The Biography Channel

*The Commission **approves** the application for authorization to redirect the tangible benefits associated with the change in ownership of the national, English-language Category 1 specialty service The Biography Channel, subject to the **conditions** specified in this decision.*

Introduction

1. The Commission received an application by Rogers Broadcasting Limited (Rogers)¹ for authorization to redirect the tangible benefits associated with the change in ownership of the national, English-language Category 1 specialty programming undertaking The Biography Channel approved pursuant to the Commission's streamlined procedures.² Specifically, Rogers requested that it be allowed to redirect the entire \$500,000 in tangible benefits from the Rogers Documentary Fund to a new self-administered fund to be known as the Biography Programming Initiative.
2. The applicant argued that the programming developed through the proposed fund would enhance the current schedule and provide Canadian audiences with new biography-related series and personality docu-soaps. Rogers added that such programming would be quality Canadian programming consistent with The Biography Channel's nature of service and biographical format. The applicant also confirmed that these benefit expenditures would be incremental to The Biography Channel's Canadian program expenditure (CPE) requirements and would flow to third-party independent producers for the creation of high-quality

¹ The application was filed by Rogers on behalf of The Biography Channel (Canada) Corporation, the licensee of The Biography Channel at that time. However, in *The Biography Channel – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2009-737, 1 December 2009, the Commission approved Rogers' acquisition of the assets of The Biography Channel as part of a corporate reorganization.

² *Applications granted approval pursuant to streamlined procedures*, Broadcasting Public Notice CRTC 2006-107, 21 August 2006.

Canadian documentary programming. The applicant stated that program proposals would be welcome and encouraged from producers across Canada for the purpose of ensuring regional reflection and that none of the tangible benefits would be used for administration costs. Finally, Rogers agreed to spend a minimum of \$125,000 each year to ensure that all funding is expended by 31 August 2013, the end of the original seven-year benefits term, and to file annual reports with the Commission detailing all expenditures and the incremental nature of the funding.

3. The Commission received an intervention commenting on the application by the Canadian Film and Television Production Association (CFTPA), now known as the Canadian Media Production Association. Having examined the application in light of applicable policies, the intervention and the applicant's reply, the Commission considers that the issues to be determined relate to the appropriateness of:
 - the allocation of benefits to a self-administered fund; and
 - the funding of docu-soaps.

Allocation of benefits to a self-administered fund

4. The CFTPA argued that in the absence of terms of trade between Rogers and the CFTPA, the benefits should be directed to an arms-length fund such as the Rogers Documentary Fund rather than to a self-administered initiative. The CFTPA submitted that a self-administered fund does not benefit the Canadian broadcasting system as a whole and gives too much control to the broadcaster over program genre or format decisions, which projects to support and which producers with whom to work. It further stated that self-administered funds give broadcasters an increasing amount of power over producers in dictating licence terms.
5. Rogers replied that there was no evidence to support the CFTPA's allegation that using a self-administered fund for tangible benefits would provide it with an undue degree of control that might limit the ability of independent producers to reach acceptable licensing agreements. Rogers reiterated that all of the funds would go to support the development and production of high-quality Canadian documentary production by third-party independent producers. It added that it was in its interest to work co-operatively with any producer who submits a strong proposal consistent with The Biography Channel's nature of service and programming format and that negotiating reasonable licensing terms with those producers was to their mutual benefit. Finally, Rogers noted that its proposal to redirect benefits to a self-administered fund was consistent with Commission policy and past practice, as demonstrated by a number of decisions approving television ownership transactions.
6. The Commission notes that as set out in Public Notice 1989-109, an applicant for a change in ownership or control of a broadcasting undertaking is expected to propose a specific package of significant and unequivocal benefits that will yield measurable improvements to the communities served by the broadcasting undertaking and to the Canadian broadcasting system. The Commission considers that Rogers' proposal to

redirect benefits to a self-administered fund would be consistent with Commission policy and past practice, provided that the conditions outlined in its application, as amended below, are met.

Funding of docu-soaps

7. The CFTPA noted that benefits have generally gone to support Canadian programming in under-represented categories, such as documentaries. It submitted that Rogers' proposal to include biography-related series and personality docu-soaps was inconsistent with this practice.
8. Rogers argued that the types of content it envisaged supporting with this initiative were entirely appropriate for benefits funding. Nevertheless, Rogers stated that should the Commission determine that allocating benefits to such content was not appropriate, it was prepared to ensure that all tangible benefits directed to the proposed fund would be used only to support priority programming. Further, it was also prepared to ensure that none of the projects funded by this initiative would be used to help meet the priority programming obligations for its Citytv stations.
9. The Commission notes that the Rogers Documentary Fund to which it originally specified that benefits were to be directed is intended to support original, high-quality, provocative and/or controversial documentaries and has strict eligibility criteria. For example, to be eligible a project must be at least 30 minutes in length, must inform or engage in critical analysis of a specific topic or point of view, must be primarily designed to inform and must have an enduring appeal and therefore a durable shelf-life. The fund does not accept current events, instructional, magazine or talk-show style programs.
10. The Commission is of the view that the allocation of the benefits should be consistent with their originally approved purpose. Since the docu-soap genre does not meet the above-noted criteria, such programming initiatives would not qualify for funding under the current Rogers Documentary Fund. Further, given that reality television programming can have documentary-like elements and that this type of programming may be confused with what the Commission currently defines as category 2(b) Long-form documentary, the Commission issued Broadcasting Notice of Consultation 2010-470, in which it proposed to amend category 11 General entertainment and human interest to make the distinction between documentary-style reality television and long-form documentaries clearer. Specifically, the Commission proposed to identify what is currently defined as category 11 as category 11(a) and to create a new category, 11(b) Documentary-style reality television, to be defined as follows:

Documentary-style reality television programming is defined as programming that presents unscripted dramatic or humorous situations, documents actual events and typically features ordinary people instead of professional actors. This type of programming involves passively

following individuals as they go about their daily personal and professional activities.

Though unscripted, this programming may be directed and may resemble a soap opera – hence the popular references to “docusoaps” and “docudramas.”

Though this type of programming may be factual, it lacks or has very minimal amounts of in-depth critical analysis of a specific subject or point of view that is the key defining element of category 2(b) Long-form documentary programming.

11. As noted in Broadcasting Notice of Consultation 2010-470, long-form documentaries, along with drama and comedy programming, are primary vehicles for communicating Canadian stories and values. Long-form documentary is also the genre of programming that the benefits related to the change in ownership of The Biography Channel were specifically intended to support. In light of the above, the Commission is of the view the benefits to be paid by Rogers should continue to support the high-quality, long-form documentary genre only.

Conclusion

12. In light of the above, the Commission **approves** the application by Rogers Broadcasting Limited for authorization to redirect the tangible benefits associated with the change in ownership of the national, English-language Category 1 specialty programming undertaking The Biography Channel to a new self-administered fund to be known as the Biography Programming Initiative, subject to the following **conditions**:

- The licensee shall direct a total of \$500,000 to the fund. This expenditure shall be made in three equal annual instalments in each of the next three broadcast years to ensure that the total amount is expended by no later than 31 August 2013.
- The expenditures in each year shall be incremental to a baseline requirement equal to The Biography Channel’s base Canadian programming expenditure (CPE) requirement for that year.
- The licensee shall ensure that all expenditures flow to third-party independent producers for the creation of high-quality Canadian documentary programming.
- The licensee must ensure that eligible projects are drawn exclusively from category 2(b) Long-form documentary.
- The licensee shall not charge any fee for the administration of the fund.

- The licensee shall file annual reports with the Commission detailing all expenditures and demonstrating that they are incremental to the baseline CPE obligation. These reports must also include:
 - the titles of the programs that are created and the related expenditures;
 - a description of the programs produced; and
 - evidence that the programming was produced by a third-party independent producer.

Secretary General

Related documents

- *Call for comments on a review of the definitions for television program categories and related matters*, Broadcasting Notice of Consultation CRTC 2010-470, 12 July 2010
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

**This decision is to be appended to the licence.*