



## Broadcasting Decision CRTC 2011-441

PDF version

Route reference: 2010-952-1

Additional references: 2010-952-2 and 2010-952-3

Ottawa, 27 July 2011

### Various licensees

Across Canada

### Group-based licence renewals for English-language television groups – Introductory decision

*In this decision, the Commission implements its group-based licensing policy for large private English-language ownership groups. This policy was developed to prepare both the broadcasting industry and the Commission for the new reality of large, integrated broadcasting ownership groups. Under this policy, the Commission will reduce its focus on Canadian exhibition and concentrate to a greater extent on ensuring stable funding to Canadian production through programming expenditure requirements, particularly in regard to programming that continues to be under-represented in the Canadian broadcasting system. In addition, the Commission has also introduced a much greater level of flexibility in the manner in which television services make and account for Canadian programming expenditures.*

*The present decision applies to the conventional television stations, Category A, Category B and Category C services, and other television services, of the following groups: Bell Media Inc., Shaw Media Inc., Corus Entertainment Inc., and Rogers Media Inc.*

*The key issues addressed in the present decision are the following:*

- *financial issues*
  - *group Canadian programming expenditure (CPE) requirements*
  - *group expenditure requirements on programs of national interest (PNI)*
  - *under-expenditures and over-expenditures relating to CPE and PNI expenditures*
  - *other financial issues relating to advertising and tangible benefits*
- *programming issues*
  - *genre exclusivity and nature of service definitions*

- *independent production*
- *regional production*
- *commitments to Canadian exhibition*
- *terms of trade*
- *local programming and the Local Programming Improvement Fund*
- *digital transition*
- *accessibility*
  - *closed captioning*
  - *described video*
  - *audio description*

*The implementation of the determinations contained in the present decision, along with other determinations specific to each of the above-noted groups, are set out in individual licence renewal decisions for those groups, also issued today.*

## **Background**

1. In Broadcasting Regulatory Policy 2010-167 (the group-based policy), the Commission established a comprehensive framework for the group-based licensing of private television services affiliated with large English-language Canadian broadcast ownership groups. The Commission stated that the new group-based policy framework would apply, at the outset, to ownership groups that generate more than \$100 million in annual revenues from private, English-language conventional television stations and that own at least one English-language specialty and/or pay programming service. The Commission indicated that the groups meeting the criteria at that time were CTVglobemedia<sup>1</sup> (the Bell Media group), Canwest<sup>2</sup> (the Shaw Media group) and Rogers Media Inc. (the Rogers Media group).

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<sup>1</sup> On 15 March 2011, CTVglobemedia Inc. (CTVgm), the initial applicant, amalgamated with CTV Inc., CTV Limited and CTV Corp. to continue as CTV Inc. Following the acquisition of CTVgm by BCE Inc., approved in Broadcasting Decision 2011-163, CTV Inc. changed its name on 1 April 2011 to Bell Media Inc.

<sup>2</sup> On 22 October 2010, in Broadcasting Decision 2010-782, the Commission approved an application by Shaw Communications Inc. (Shaw), on behalf of Canwest Global Communications Corp. (Canwest Global), for authority to change the effective control of Canwest Global's licensed broadcasting subsidiaries, which would henceforth be exercised by Shaw. In that decision, the Commission noted that this change would be effected through a wholly-owned subsidiary of Shaw known as 7316712 Canada Inc. On 28 October 2010, 7316712 Canada Inc. changed its name to Shaw Media Inc.

2. In regard to implementing this framework through the group-based licence renewals, the Commission stated in Broadcasting Notice of Consultation 2010-952-1 that its objective is to provide private broadcasting groups with greater flexibility in the allocation of resources amongst their various television platforms, while permitting it to consider factors such as the total audience reached by a broadcasting group, the totality of a broadcasting group's revenues, and the totality of a broadcasting group's programming commitments and obligations.
3. The group-based policy was developed to prepare both the broadcasting industry and the Commission for the future reality of the Canadian broadcasting system, in which most Canadian programming services operate as part of large, integrated groups. In recognition of this reality, the Commission has reduced its focus on Canadian exhibition and concentrated, to a greater extent, on production expenditures on Canadian programming. The new policy ensures stable, continued support for the creation of Canadian programming, particularly in regard to programming that continues to be under-represented in the Canadian broadcasting system. Specifically, the Commission has announced new group-based Canadian programming expenditure (CPE) requirements and additional spending requirements relating to programs of national interest (PNI), which it defined as scripted drama, long-form documentaries and designated Canadian awards shows. As part of these new requirements, the Commission has also introduced a much greater level of flexibility in the manner in which television services make and account for Canadian programming expenditures.
4. As set out in Broadcasting Notice of Consultation 2010-952-1, the Commission received applications from the above-noted English-language broadcasting ownership groups for the renewal of the broadcasting licences for various television stations and specialty and pay television services. These groups also applied for the revocation of the licences and the issuance of new licences for services for which the licences do not expire by 31 August 2011, so that they could be treated as part of this proceeding. In addition, Corus Entertainment Inc. (the Corus group) requested that the licences for its television services also be renewed under the new group-based licensing framework. Finally, the Commission received a separate licence renewal application from Shaw Cablesystems Limited (Shaw Cablesystems) for CJBK-TV Kenora, Ontario. Since this station shares common ownership with the Shaw Media group and the Corus group, the Commission considered it appropriate to treat its renewal application as part of this proceeding.
5. The Commission received numerous interventions both in support and in opposition to various aspects of the groups' applications. The interventions are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

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

6. After examining the applications in light of the applicable regulations and policies, and taking into account the interventions received and the licensees' replies, the Commission considers that the issues to be addressed in its determinations relate to the following:

- groups included in the group-based policy;
- financial issues;
- programming issues; and
- accessibility.

**Groups included in the group-based policy**

7. The Commission has identified the following as “designated groups,” i.e., the groups to be included in the full implementation of the group-based policy: the Bell Media group, the Shaw Media group and the Corus group. As discussed below, the Rogers Media group will be excluded from a number of the financial components of the group-based policy at this time. As such, it will not constitute one of the designated groups referred to throughout this decision.
8. In Broadcasting Notice of Consultation 2010-952-1, the Commission indicated that it would consider the benefits and other implications of treating the various Shaw Media group and Corus group services, as well as the Shaw Cablesystems television station, as a single group for the purpose of the group-based policy. Following the public hearing and after examination of the evidence available to it, the Commission determines that it is more appropriate to treat the Shaw Media group and the Corus group as separate designated groups. Further, the Commission considers it appropriate to treat Shaw Cablesystems’ application to renew the broadcasting licence for CJBN-TV separately from its treatment of the designated groups. The Commission’s determinations in regard to CJBN-TV are set out in Broadcasting Decision 2011-448, also issued today.
9. The following decisions set out the licence renewals for the conventional television stations, the Category A services, the Category B services, and the Category C services,<sup>3</sup> as well as certain other services, for the three designated groups and for the Rogers Media group:
  - Bell Media Inc. – Broadcasting Decision 2011-444
  - Shaw Media Inc. – Broadcasting Decision 2011-445
  - Corus Entertainment Inc. – Broadcasting Decision 2011-446
  - Rogers Media Inc. – Broadcasting Decision 2011-447

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<sup>3</sup> As set out in Broadcasting Public Notice 2008-100, effective 31 August 2011, Category 1 and analog pay and specialty services will be renamed Category A services, and Category 2 services will be renamed Category B services. Further, as noted in Broadcasting Notice of Consultation 2010-931, Category C services are services that provide programming in genres that the Commission has opened up to competition. Currently, this category of services includes competitive Canadian specialty services operating in the genres of mainstream sports and national news.

10. The terms, conditions of licence, expectations and encouragements for the various television stations and services are set out in the above-noted decisions, as well as in Broadcasting Regulatory Policies 2011-442 and 2011-443, also issued today, and Broadcasting Regulatory Policies 2010-786-1 (see also 2010-786) and 2009-562-1 (see also 2009-562). These regulatory policies set out the standard terms, conditions of licence, expectations and encouragements for those television stations and services.
11. As noted in the group-based policy, given the pace of change in the broadcasting industry and the desire to assess the impact of the new group-based approach, the Commission has granted licence renewal terms that are shorter than the seven year maximum. For the services of the three designated groups, the Commission has granted five-year licence renewal terms. For the services of the Rogers Media group, it has granted a three-year licence renewal term, for the reasons cited in paragraph 41, below.

### **Financial issues**

12. The Commission has considered the following in regard to financial issues:
  - group CPE requirements;
  - group expenditure requirements on PNI;
  - under-expenditures and over-expenditures relating to CPE and PNI expenditures; and
  - other financial issues relating to advertising and tangible benefits.

### ***Group Canadian programming expenditure requirements***

#### *Group-based licensing policy*

13. In the group-based policy, the Commission introduced a requirement for a minimum level of spending on Canadian programming by each designated group. Specifically, it stated that the base spending level for each designated group should be a minimum of 30% of the group's gross revenues. It considered this an appropriate level given the record of the groups' actual spending on Canadian programming in the 2006-2007, 2007-2008 and 2008-2009 broadcast years. The Commission also indicated that it did not wish to impose additional obligations on the designated groups beyond their recent historical CPE levels, in particular since Canadian Media Fund (CMF) licence-fee top-ups would no longer be counted as eligible CPE incurred by broadcasters.
14. The services within each group to be included in the group CPE are the following:
  - conventional television stations;
  - Category A services; and

- Category B services with more than one million subscribers.
15. These services are referred to throughout this decision and the above-noted licence renewal decisions as “qualifying services.” The Commission notes that, as set out in the group-based policy, mainstream sports and national news services (licensed as Category C services) are excluded from the group CPE.
  16. In the group-based policy, the Commission also set out flexibility provisions for CPE requirements. Specifically, the Commission stated that qualifying specialty services would have the flexibility to attribute 100% of their required CPE to any other qualifying specialty service or conventional television station within the same designated group. Conventional television stations would have the flexibility to attribute a maximum of 25% of their required CPE to qualifying specialty services within the same designated group.

*Calculation of Canadian programming expenditures*

17. The designated groups and the Rogers Media group proposed a common approach in regard to the calculation of CPE. Specifically, they expressed the view that the CPE for conventional television stations should be calculated in each broadcast year based on a formula. Under this formula, the CPE for the conventional television stations controlled by each of the groups would be calculated by subtracting the dollar amount of the aggregate CPE requirements for pay and specialty services from the dollar amount of the group CPE. The difference would constitute the CPE requirement in dollars for the conventional television stations.
18. The groups further proposed that, in the first year of the new licence term, CPE requirements be calculated based on an average of total group revenues over the previous three broadcast years. In subsequent broadcast years, only the previous broadcast year’s revenues would be used in the calculation.
19. In addition, the groups proposed that funding received by conventional television stations from the Local Programming Improvement Fund (LPIF) be excluded from eligible revenues when calculating CPE requirements. In their view, imposing CPE requirements on this funding would be contrary to the principles underlying the LPIF. The Bell Media group also took the position that revenues associated with its broadcast of Olympics programming should be excluded from the CPE calculation.
20. Producers and their representatives emphasized the importance of maximizing expenditures on Canadian programming and opposed any proposals that would reduce such spending. In particular, these parties took the view that all appropriate revenues should be used in setting expenditure requirements, including both LPIF and Olympics revenues, and that proposals to “smooth out” CPE requirements based on historical averages should be rejected since they too would reduce broadcaster expenditures on Canadian programming.
21. In the Commission’s view, the group-based policy clearly contemplates that CPE requirements for conventional television stations be set at a specific level throughout

the licence term. This level should be consistent with historical spending by the group, but should not act as a ceiling that might limit future expenditures beyond the group CPE level. The formula proposed by the groups for establishing CPE requirements for conventional television stations would set a fixed ceiling on such expenditures, with those stations carrying a larger burden of such expenditures should specialty and pay service revenues decline relative to conventional television stations, and vice versa.

22. Instead, the Commission will use the method set out in paragraphs 51 and 52 of the group-based policy to establish an appropriate CPE percentage level for the conventional television stations of each group, as discussed below. While this percentage level will remain fixed over the licence term, the dollar value of this CPE requirement will increase as conventional television station revenues increase, and will not be limited or offset in any way by increases in specialty and pay services revenues. Similarly, specialty and pay services will continue to have fixed CPE percentage levels, which also represent dollar values that will increase as revenues increase, without a limitation or offset related to conventional television station revenues. In the Commission's view, this method is the most likely to result in a greater overall contribution to Canadian programming by each of the groups.
23. With respect to LPIF funding, the Commission agrees with the groups that these amounts should be excluded from eligible revenues used to calculate CPE requirements. This funding is intended to maintain the production of local programming by non-metropolitan television stations and is, therefore, already dedicated to the production of valued Canadian programming. Further, the Commission notes that it intends to conduct a review of LPIF eligibility and funding in its third year of operation, i.e., the 2011-2012 broadcast year, at which time it will consider the future role the LPIF will play in the funding of local programming.
24. However, the Commission does not consider it appropriate to grant the Bell Media group's request to exclude Olympics revenues from CPE calculations. It is not convinced that such revenues can clearly be distinguished from other revenues in that period or in the periods preceding or following the broadcast of Olympics programming. Moreover, both the Bell Media group's revenues from and expenditures on Olympics programming formed an integral part of its programming strategy in the previous licence term and may potentially play a similar role in the next licence term. In the Commission's view, it is not appropriate to exclude either these revenues or expenses from contributing towards the establishment and fulfillment of CPE requirements in the next licence term, especially since the designated groups, under the group-based policy, will be permitted the flexibility to shift or spread their expenditure requirements to other qualifying services.
25. Finally, the Commission accepts the groups' proposal that the calculation of CPE for the first year of the new licence term be based on an average of the three previous broadcast years' revenues. Although this proposal does somewhat reduce CPE in the first year of the licence term, it also provides a transitional phase that mitigates the impact of the increase in aggregate CPE requirements in the first year of licence term.

In subsequent years, the groups will be required to calculate CPE based solely on the previous broadcast year's revenues.

26. These determinations have been implemented through the conditions of licence set out in the above-noted individual licence renewal decisions for each of the groups.

*Canadian programming expenditure requirements for the designated groups*

27. Each of the designated groups made proposals relating to CPE. Although there was initially some variation in these proposals, by the conclusion of the proceeding, each of the designated groups expressed their willingness to meet an overall group CPE level of 30% of gross broadcasting revenues, as proposed by the Commission.
28. Interested parties generally emphasized that the 30% level proposed by the Commission was intended to be a minimum level of expenditures. Producers, guilds and their representatives, in particular, took the position that strict CPE requirements are necessary to support Canadian production and to discipline expenditures on foreign programming.
29. Having taken into consideration both the financial information submitted by the groups as well as the various evidence and proposals submitted by the groups and interveners, the Commission continues to be of the view that a group CPE level of 30% would be appropriate for each of the designated groups. This level is consistent with historical expenditures, ensures substantial stable funding for Canadian programming, and places a reasonable limit on foreign programming expenditures. Consistent with the objectives of the group-based policy, a 30% group CPE level will enable the designated groups to offer financially strong and competitive Canadian services to Canadians over the next licence term.
30. As described in the group-based policy, CPE requirements for each of the designated groups will be implemented through the conditions of licence for each of the qualifying services that are part of a designated group. In general, the Commission has accepted the individual CPE levels proposed by the designated groups for each of their specialty or pay television services. As noted above, the CPE requirement for conventional television stations will be calculated by subtracting the dollar amount of the aggregated CPE requirements for qualifying specialty and pay television services from the dollar amount of the 30% group CPE. The difference between these amounts will be used to determine the appropriate CPE percentage requirement for the conventional television stations that are part of that group.
31. Based on this group CPE level of 30%, the Bell Media group will be required to meet a CPE level of 26% of gross revenues for its conventional television stations; the Shaw Media group will be required to meet a CPE level of 22% of gross revenues for its conventional television stations; and the Corus group will be required to meet a CPE level of 28% of gross revenues for its conventional television stations.
32. The Commission will also permit designated groups the flexibility to count expenditures made on one qualifying service towards the CPE requirements of



another service. Specifically, qualifying specialty and pay television services will have the flexibility to attribute 100% of their required CPE to any other qualifying specialty or pay television service or qualifying conventional television station, within the same designated group. Conventional television stations will have the flexibility to share 100% of their expenditure requirements among themselves and to attribute a maximum of 25% of their required CPE to qualifying specialty or pay television services within the same designated group.

33. These determinations have been implemented through the conditions of licence set out in the above-noted individual licence renewal decisions for each of the designated groups.

*Canadian programming expenditure requirements for the Rogers Media group's services*

34. From the outset of this proceeding, the Rogers Media group has taken the position that a group CPE level of 30% is not appropriate for its services due in part to the small number of qualifying specialty services it operates (i.e., The Biography Channel, G4TechTV and Outdoor Life Network), as compared to the other groups. It submitted that its conventional television stations would therefore be required to meet a substantially higher CPE requirement than would other groups in order to meet the 30% target. The Rogers Media group proposed a number of alternatives to a group CPE level of 30%, including setting a lower group CPE requirement of 25%, or opting out of the CPE requirements of the group-based policy entirely. In its final written submission, the Rogers Media group proposed a 22% CPE requirement for its conventional television stations.
35. Other interested parties, including the Bell Media group and the Shaw Media group, argued that the group-based policy requires equitable treatment and the imposition of similar levels of CPE on all English-language groups. They submitted that imposing a lower CPE level on one or more groups would grant that group a competitive advantage, particularly in regard to that group's ability to purchase the most profitable U.S. programming.
36. Having examined all of the evidence submitted by the groups and interveners, the Commission concludes that a CPE level of 30% would be unduly burdensome on the Rogers Media group at this time. Unlike for the designated groups, the Commission's analysis of the Rogers Media group's financial information and asset mix indicates that requiring it to meet a group CPE level of 30% would significantly limit its ability to compete with other services in at least the first years of the new licence term, placing it at a significant competitive disadvantage vis-à-vis the other groups.
37. Specifically, the designated groups will be able to rely on relatively higher levels of CPE from specialty or pay television services to reduce the expenditure requirements on conventional television stations. CPE from specialty and pay television services may also be attributed to conventional television stations to further reduce the burden on those stations. For the Bell Media group and the Shaw Media group, at least, this in turn permits greater expenditures on non-Canadian programming for broadcast on

conventional television stations, while still maintaining a high level of expenditure on Canadian programming. Due to the small number of the Rogers Media group's qualifying specialty services, a disproportionate percentage of the group CPE requirement would effectively fall on this group's conventional television stations.

38. In light of the Rogers Media group's particular situation, the Commission has determined, as noted above, that it will not be considered a designated group. Consequently, this group will be excluded from certain of the financial components of the group-based policy, and, in particular, from the group CPE requirement of 30%. However, as discussed below, the Commission will impose a number of new financial requirements on the Rogers Media group that are similar to those imposed on other groups. With respect to programming and other non-financial issues, the Rogers Media group will be treated in the same manner as the designated groups.
39. The Commission is also of the view that since the Rogers Media group is not capable of meeting the financial obligations of the group-based policy, it should not be permitted to enjoy the financial benefits of that policy. Accordingly, unlike the designated groups, the Commission will not grant the Rogers Media group the flexibility to count expenditures made on one service towards the CPE requirements of another service. Specifically, this group's specialty services will not be able to attribute any of their required CPE to any other specialty service or conventional television station within that same group. Inversely, the Rogers Media group's conventional television stations will not have the flexibility to attribute any of their required CPE to the group's specialty services, although this group will be permitted to share CPE expenditures among its conventional television stations. The Commission considers that this flexibility is an extremely important benefit of the group-based policy that will be enjoyed only by the designated groups until such time as the Rogers Media group is able to meet CPE obligations that are comparable to those of the designated groups.
40. Although the Rogers Media group will not be eligible to enjoy the benefits of CPE flexibility under the group-based policy, the Commission will continue to impose CPE requirements on that group's specialty services and will impose a new CPE requirement on its conventional television stations. Specifically, the Rogers Media group will be required to meet a 23% CPE level for its conventional television stations. While this level is slightly higher than the Rogers Media group's proposed CPE of 22% for conventional television stations, the Commission considers the 23% CPE level appropriate based on this group's historical expenditures as well as on its financial projections over the next licence term.
41. In addition, the licences for the various Rogers Media group services will be renewed for only a three-year term instead of the five-year term granted to the services of the designated groups. This shorter licence term will give the Commission an earlier opportunity to reassess this group's eligibility under the group-based policy. Further, the Commission has set out an expectation in the Rogers Media group's licence renewal decision that it apply to join the group-based policy at a 30% group CPE

should, at any time during the new licence term, its asset mix change substantially to include a larger number of new qualifying specialty or pay television services.

42. These determinations have been implemented through the conditions of licence for the applicable services for which the broadcasting licences are renewed in Broadcasting Decision 2011-447.

***Group expenditure requirements on programs of national interest***

43. PNI relate to programming drawn from program categories 7 Drama and comedy, or 2(b) Long-form documentary,<sup>4</sup> as well as certain specific award shows authorized by the Commission.<sup>5</sup> In the group-based policy, the Commission determined that it would be appropriate to impose a minimum, aggregate level of spending on PNI, which would be based on approximate levels of spending on PNI by the designated groups over the past three broadcast years. PNI expenditures would replace past requirements relating to priority programming.
44. Prior to the issuance of the group-based policy, the Commission collected separate expenditure information only for programming drawn from program category 7. Based on this information, the Commission determined that group expenditures of at least 5% of gross revenues might be appropriate. The Commission further stated in the group-based policy that it would require the groups to file their historical spending on programming from program category 2(b) and award show programming, and that it intended, upon analysis of these expenditures, to establish a base level spending requirement on PNI and determine whether any increases would be appropriate.
45. The same qualifying services that are subject to group CPE requirements will also be subject to PNI requirements.

*Programs of national interest requirements for the designated groups*

46. Each of the designated groups made proposals relating to PNI expenditures. By the conclusion of the proceeding, both the Bell Media group and the Shaw Media group had proposed a PNI expenditure level of 5% for each of their qualifying services, while the Corus group had proposed a level of 8%.
47. Producers and their representatives generally took the position that the levels of PNI expenditures proposed by the groups were insufficient. These parties emphasized that the 5% level initially proposed in the group-based policy was a minimum level, and took the position that the Commission should ensure that PNI expenditures do not

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<sup>4</sup> These and other program categories are set out in Item 6 of Schedule 1 to the *Television Broadcasting Regulations, 1987*, the *Specialty Services Regulations, 1990*, and the *Pay Television Regulations, 1990*.

<sup>5</sup> In Broadcasting Regulatory Policy 2010-808, the Commission set out its procedure for identifying and updating the list of award shows that will qualify as programs of national interest, and provides a web link to the current list.

decrease below historical levels. In this regard, several parties proposed a PNI level of 10% for all designated groups.

48. Having examined the financial information submitted by the designated groups as well as the proposals and evidence submitted by interveners, the Commission considers that a PNI expenditure level of 5% would be appropriate for the Bell Media group and the Shaw Media group, and that a PNI expenditure level of 9% would be appropriate for the Corus group. In each case, the Commission has taken into consideration the historical PNI expenditures spanning the 2008-2009, 2009-2010 and 2010-2011 broadcast years and rounded these expenditures down to the nearest percentage point. In the Commission's view, this approach will ensure adequate funding for PNI programming in the next licence term, without unduly affecting other types of Canadian programming or imposing unnecessary burdens on the designated groups.
49. In addition, these groups will be permitted the flexibility to count up to 100% of PNI expenditures on one qualifying service towards the requirements of another of its qualifying services.
50. As set out in the group-based policy, the Commission will also impose a requirement whereby at least 75% of PNI expenditures made by the designated groups must be allocated to independently-produced programs.
51. These determinations have been implemented through the conditions of licence set out in the above-noted individual licence renewal decisions for each designated group.
52. In regard to the collection of information on programming expenditures, the Commission notes that in the past, some groups were required to provide information on independently-produced priority programming. In the group-based policy, the Commission imposed an annual reporting requirement relating to PNI on all designated groups so that it would be able to assess the effectiveness of the new regulatory measures in this regard. New proposed annual report forms were placed on the public record of this proceeding, and both the groups and interveners were given the opportunity to comment on these forms. Having taken their comments into consideration, the Commission has approved these forms, as set out on the public record, and notes that the groups will be required to submit the information requested in these new forms with their annual returns in each broadcast year of the next licence term.

*Programs of national interest requirements for the Rogers Media group services*

53. Rogers, because of its asset mix and the fact that its services do not typically broadcast many programs that qualify as PNI, made a number of proposals with respect to required expenditures on PNI. These proposals included a PNI expenditure level of 2.5% as well as a combination of spending on PNI and on local programming. Over the course of the hearing, Rogers also described its plans to focus

on increasing local programming produced for its Citytv conventional television stations, in particular, in markets outside of Toronto.

54. In its final written submissions, the Rogers Media group committed, for the first and second years of the new licence term, to PNI expenditures of at least 2.5% of total group revenues, and to an increase to 3% for the third year of the licence term. In addition, it committed to direct an additional 2.5% of gross revenues over and above its aggregate baseline spending in 2011 to local programming on its Citytv conventional television stations in the first and second years of its new licence term, decreasing to 2% in the third year. Finally, it committed to allocate 80% of its incremental local expenditures to markets outside of Toronto.
55. As discussed above for CPE, certain interveners, including the Bell Media group and the Shaw Media group, argued that the group-based policy requires equitable treatment and the imposition of similar PNI expenditure requirements on all English-language groups. Although some parties agreed that a lower PNI requirement would be appropriate for the Rogers Media group, most recommended PNI levels similar to those proposed by the Bell Media group and the Shaw Media group for their own services.
56. Upon examination of the financial information submitted by the Rogers Media group, and of the views and evidence submitted by interveners, the Commission considers it appropriate to accept the Rogers Media group's proposal. This means that Rogers will be required to spend a total of 5% of gross revenues on a combination of PNI and incremental local programming, a spending level that represents the same proportion as that spent by the Bell Media group and the Shaw Media group on PNI. More specifically, the Rogers Media group will be required to spend 2.5% of its gross revenues on PNI and 2.5% of its gross revenues on incremental local programming (i.e., spending on programming that is over and above the group's aggregate baseline spending in 2011 on its Citytv conventional television stations), in the first and second years of its new licence term. Further, it will be required to increase the PNI expenditure level to 3% of its gross revenues and decrease the minimum level of spending on incremental local programming to 2% of its gross revenues, in the third year of the new licence term. The Commission notes that the above-noted PNI level of 2.5% is consistent with the Rogers Media group's historical spending on PNI programming.
57. In addition, the Commission considers that new local programming would provide a significant benefit to viewers in the Edmonton, Calgary and Vancouver markets. As proposed by the Rogers Media group, the Commission will also require that 80% of this new programming be produced in markets outside of Toronto.
58. Taken in combination, the above-noted Rogers Media group's expenditures on PNI and on new local programming equal 5% of the group's gross revenues, a level similar to that required of the Bell Media group and the Shaw Media group. The Commission considers this level appropriate for the Rogers Media group at this time, particularly since, as stated above, this group will not be permitted to make use of the

CPE flexibility granted to the designated groups. The Commission will review PNI requirements as part of the Rogers Media group's next licence renewal in three years. Furthermore, the Commission will review the Rogers Media group's PNI requirements if it applies to join the group-based policy at a 30% group CPE.

59. As with the designated groups, the Commission will also impose a requirement whereby at least 75% of PNI expenditures made by the Rogers Media group services must be allocated to independently-produced programs.
60. These determinations have been implemented through the conditions of licence for the applicable services for which the broadcasting licences are renewed in the Rogers Media group's licence renewal decision.
61. In regard to the collection of information on programming expenditures, the Rogers Media group, as with the designated groups, will be required to submit the information requested in the approved annual report forms with its annual returns for each broadcast year of the new licence term. The Rogers Media group will also be required to report on its incremental local programming expenditures.

***Under-expenditures and over-expenditures relating to Canadian programming expenditures and programs of national interest***

62. Currently, qualifying specialty and pay television services are permitted to make-up under-expenditures of up to either 5% or 10%, or carry forward over-expenditures of the amounts that are spent on Canadian programming in one broadcast year against CPE requirements in the subsequent broadcast year. The groups submitted that this authorization allows them to better manage their expenditures, particularly in situations where production costs span more than one broadcast year. All four of the groups proposed that all qualifying services be permitted to count under- or over-expenditures of up to 10% in any broadcast year of the new licence term against CPE requirements in the subsequent broadcast year.
63. The Commission agrees that an authorization of this type will continue to be a useful tool for groups to manage both CPE and PNI expenditures, particularly in the case of multi-year projects. However, the Commission considers an under- or over-expenditure level of 5% sufficient, especially given that the designated groups will also be granted the flexibility to count CPE on one qualifying service towards another service. In addition, the Commission has clarified the language of the under- or over-expenditure authorizations to indicate that under-expenditures must be made up in the subsequent broadcast year and that over-expenditures beyond 5% will not be credited against CPE requirements in the following broadcast year.
64. These determinations have been implemented through the conditions of licence set out in the above-noted individual licence renewal decisions for each of the groups.

## **Other financial issues**

### *Advertising limits on speciality services*

65. Until 31 August 2009, conventional television station licensees were limited, by the *Television Broadcasting Regulations, 1987*, in regard to the number of minutes per clock hour of advertising material that could be broadcast on their services. Conventional television stations no longer have this requirement, while specialty services continue to be limited, by condition of licence, to a maximum of 12 minutes of advertising per clock hour. In Broadcasting Public Notice 2008-100, the Commission determined that the continuation of this limit on specialty services was appropriate, noting the potential negative consequences of its elimination on smaller conventional television stations and independent specialty services.
66. The Commission remains concerned that additional advertising inventory on the specialty services owned by the large ownership groups would have a negative impact on small and independent services. Accordingly it will maintain the current limitations on advertising by specialty services. For Category B and Category C services, these limitations are already part of the standard conditions of licence for such services set out in Broadcasting Regulatory Policies 2010-786-1 and 2009-562-1, respectively. For Category A services, these limitations are part of the standard conditions of licence for such services set out in Broadcasting Regulatory Policy 2011-443.

### *Non-traditional advertising*

67. As part of its licence renewal application, the Shaw Media group also proposed that its conditions of licence limiting its specialty services to 12 minutes of advertising per clock hour be amended to specifically exclude forms of non-traditional advertising, such as product placement or virtual ads, from being counted towards this limit.
68. In this regard, the Commission notes that it did not intend for specialty services to count non-traditional forms of advertising, such as those described by the Shaw Media group, towards the 12-minute limit. In fact, in Broadcasting Public Notice 2007-98, the Commission amended the definition of “commercial message” set out in the *Television Broadcasting Regulations, 1987*, which clarified that only advertising that is “broadcast in a break within a program or between programs” would be counted as a commercial message. In the Commission’s view, the definition of “commercial message” found in the *Specialty Services Regulations, 1990* should be amended to be in line with the definition set out in the *Television Broadcasting Regulations, 1987*. Such an amendment would harmonize the Commission’s treatment of advertising on conventional television stations and specialty services. As such, the Commission intends to initiate a proceeding to consider these proposed changes to the *Specialty Services Regulations, 1990*.

### *Tangible benefits*

69. In the group-based policy, the Commission indicated that it would discuss further at licence renewal the adoption of the PNI spending requirements as the incrementality threshold for certain tangible benefits initiatives. In light of the move away from priority programming (an exhibition requirement) to PNI (an expenditure requirement), the Commission was of the preliminary view that the PNI spending requirements should be used as the incrementality thresholds for the following:

- the tangible benefits initiatives designed to create and support drama programming (program category 7) and/or long-form documentary programming (program category 2(b)), of the Bell Media group, the Shaw Media group and the Rogers Media group; and
- any other benefits that have used priority programming as the threshold.

70. Parties that commented on this preliminary view agreed that the Commission's proposed approach to calculating the incrementality of benefits was appropriate. Accordingly, the Commission will adopt this approach, as set out in the group-based policy.

### **Programming issues**

71. In regard to programming issues, the Commission has considered the following:

- genre exclusivity and nature of service definitions;
- independent production;
- regional production;
- commitments to Canadian exhibition;
- terms of trade;
- local programming and the LPIF; and
- digital transition.

### ***Genre exclusivity and nature of service definitions***

72. In Broadcasting Public Notice 2008-100, the Commission stated that "one of the contributing factors to the success of Canadian analog and Category 1 services has been their ability to develop a unique genre of programming and present that programming to Canadian viewers." Currently, Category A services are licensed on a one-per-genre basis, i.e., they are not allowed to compete in terms of their genres of programming. Category B services, on the other hand, can be competitive with each other, but not with Category A services. Finally, Category C services, currently



limited to mainstream sports services and mainstream national news services, are fully competitive within their respective genres.

73. The nature of service conditions of licence that are imposed on Canadian specialty services ensure that these services remain distinct and true to their genres, thus preventing them from becoming directly competitive with (other) Category A services. In other words, nature of service conditions of licence enforce genre exclusivity, which a) ensures diversity of programming genres, b) protects revenues by limiting competition and thereby enabling Category A services to meet their higher Canadian programming obligations, and c) allows viewers to “know what they’re getting,” given that they agree to pay for a certain service and therefore expect that the programming broadcast will be consistent with the nature of that service.
74. Each specialty service has a nature of service, which is determined by conditions of licence that set out the following:
- a narrative description of the service and the type of programming it will provide;
  - a list of program categories from which the service is authorized to draw programming; and
  - any prohibitions or limitations on the program categories from which the service may draw programming, or other limiting conditions.
75. In Broadcasting Public Notice 2008-100, the Commission decided to maintain genre exclusivity, stating that “a wholesale move away from genre exclusivity could have significant negative consequences on the diversity of Canadian services offered to viewers.” It also stated that program diversity has two major benefits for Canadians: not only does it provide viewers with a wide range of Canadian programming choices, it ensures the maximum contribution to the creation of Canadian programming.
76. In that public notice, the Commission determined that it would be appropriate to introduce competition amongst Canadian services operating in the genres of mainstream sports and mainstream national news. As noted above, the conditions of licence for services in these two genres (including standard nature of service definitions) are set out in Broadcasting Regulatory Policy 2009-562-1. In Broadcasting Public Notice 2008-100, the Commission also indicated that it would be prepared to consider applications proposing to open other genres in the future.
77. In that public notice, the Commission also decided to permit Category A services to draw programming from all program categories, subject to specific limits to protect certain services.

*General approach to proposed nature of service amendments*

78. As part of their renewal applications, each group proposed amendments to the nature of service definitions of several of their services, either to implement the flexibility afforded in Broadcasting Public Notice 2008-100, or to incorporate slightly more substantive amendments to the relevant conditions of licence. As part of the renewal proceeding, the Commission reviewed compliance with existing conditions of licence and explored potential concerns arising from the rebranding of services during the past licence term.
79. In its intervention, Rogers Broadcasting Limited (Rogers) recommended that the Commission re-evaluate the domestic genre exclusivity policy and the effectiveness of that policy. The designated groups replied to Rogers' intervention by recommending that the current policy be maintained. The Bell Media group noted that the Commission already has a policy for opening up additional genres, as set out in Broadcasting Public Notice 2008-100. The Shaw Media group argued that removing genre protection at this point would be detrimental to Category A services in particular, and would add regulatory uncertainty to the system. The Corus group noted that it had filed its renewal applications under the assumption that genre protection would remain in place.
80. The Commission took the opportunity afforded by the oral public hearing to raise the issue of its genre exclusivity policy. In general, parties agreed that the policy needed review, but that the present proceeding was not the right venue. Most broadcasters argued that while the policy had become unclear and unwieldy in certain respects, in general the policy was working to ensure diversity and the continued success of Canadian services. Several parties noted that the system is already in a state of considerable flux as a result of the changes to the *Broadcasting Distribution Regulations* that will go into effect 1 September 2011. They generally were of the view that the policy should be reviewed prior to the next round of licence renewals.
81. At the hearing, the Commission also explored a wide range of amendments to various components of the nature of service conditions of licence for services of a number of licensees, as well as questions relating to the compliance of certain services with existing conditions of licence. This review process provided further evidence of the escalating difficulty of regulating genre and of the potential pitfalls, including the unintended consequence of preventing new players from entering the market, particularly where an existing service has effectively vacated its original genre, or has broadened its genre to a significant extent.
82. Nevertheless, the Commission reiterates that genre exclusivity should be maintained, at least for the short term, for the reasons cited in Broadcasting Public Notice 2008-100. It is concerned, however, that the application of its genre exclusivity policy is becoming increasingly challenging, as evidenced by the discussions at the hearing. In that context, the Commission has decided that it will review its genre policy prior to the next English-language group licence renewals.

83. In light of the above, the Commission has reviewed the amendments to nature of service definitions proposed by the groups as well as the licensees' compliance with existing definitions and other conditions of licence. So as to limit any further erosion of the existing genres in the new licence term, and prior to its review of its genre policies, the Commission has adopted the following general approach to such issues. With few exceptions, the Commission has denied any changes to a service's nature of service that, in its view, would significantly alter the essence of that service, or reduce programming diversity. As a result, the Commission has generally taken a strict stance in regard to proposed amendments. Only those amendments that are consistent with the Commission's policy set out Broadcasting Public Notice 2008-100, that are otherwise deemed to be "outliers," or that relate to the removal of unnecessary historical requirements, have been approved.

*Compliance with nature of service*

84. In regard to concerns about compliance with existing conditions of licence, the Commission notes that it held very detailed conversations with each of the licensees over the performance of their various services. As a result of these discussions, the Commission concludes that at least two services, the Oprah Winfrey Network (OWN) and G4TechTV, have interpreted their existing nature of service definitions so broadly as to call into question their compliance with their conditions of licence. In addition, the Commission finds that the rebranding of Discovery Civilization as Discovery Science and this service's new programming focus may also call into question this service's compliance with its conditions of licence.

85. In regard to OWN (originally known as Canadian Learning Television and then as VIVA), the Commission notes that the service (under the brand of "Canadian Learning Television") is currently licensed to provide the following:

a national English-language specialty television service which provides formal and informal educational programming and learning opportunities that generally focus on adult education. Educational programs will come from a full spectrum of basic, credit-based, skills-related and life-enhancing programs, many of which will be undertaken in cooperation with colleges, universities and training institutions.<sup>6</sup>

86. Further, this service is required to ensure that not less than 55% of the programs broadcast during the broadcast day are drawn from program category 5(a) Formal education and pre-school, and that such programming has clear learning objectives.

87. The Commission is of the view that the rebranding of Canadian Learning Television first as VIVA and then as OWN has extended the service's programming so far from its original mandate that its continued status as a Category A service is now in question. As a result, the Commission requires the Corus group to ensure that the

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<sup>6</sup> This service was originally licensed in Decision 96-600. This condition of licence is set out in Broadcasting Decision 2004-17.

service is fulfilling its educational mandate. The Commission therefore requires the Corus group to file a report by no later than **27 January 2012**, demonstrating that it has brought the service into conformity with its original nature of service definition. In the alternative, it can apply to open up a new genre for competition under the Category C framework, or make an alternative proposal that addresses the Commission's concerns. If at that time the Commission is still of the view that the service is in non-compliance with its nature of service conditions of licence, the Commission may take further regulatory action, such as a mandatory order.

88. Similarly, the Commission is concerned by the extent to which G4TechTV has expanded its programming in relation to its nature of service definition. Originally known as TechTV Canada, G4TechTV was licensed to provide a service "consisting exclusively of programming related to computing, technology and the Internet."<sup>7</sup> At the hearing and through the written process leading up to the hearing, G4TechTV explained that its programming strategy was now focussed on the "e-generation," targeting the demographic of viewers between 18 and 34 years of age, and endeavouring to meet the varied interests of this group of viewers. The Commission finds this unilateral shift of programming focus inconsistent with its genre exclusivity policy and requires the Rogers Media group to file a report by no later than **27 January 2012**, demonstrating that it has brought the service into conformity with the original nature of service definition. In the alternative, it can apply to open up a new genre for competition under the Category C framework, or make an alternative proposal that addresses the Commission's concerns. If at that time the Commission is still of the view that the service is in non-compliance with its nature of service conditions of licence, the Commission may take further regulatory action, such as a mandatory order.
89. In the case of Discovery Science, the Commission is concerned that the new programming focus of the service away from anthropology towards science in general raises concerns about the competitiveness of this Category B service with the Category A service known as Discovery. The Commission will monitor the programming of Discovery Science closely in the next licence term. Should the Commission find that the programming offered by that service is inconsistent with its nature of service or is competitive with Discovery or another Category A service, it may take further regulatory action, such as that proposed in regard to the OWN and G4TechTV services described above.
90. The Commission also has concerns regarding the performance of MTV, Twist TV, Showcase Diva, Outdoor Life Network (OLN), History, and Country Music Television (CMT). Specifically, the Commission is concerned that some programming offered on these services is inconsistent with their nature of service conditions of licence. The Commission expects these services to reassess their programming strategies to ensure that all programming is consistent with their nature of service. The Commission intends to monitor their ongoing compliance and review that compliance as necessary.

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<sup>7</sup> See Decision 2000-454.

91. Finally, the Commission wishes to remind all parties that all programming must be consistent with their nature of service definitions, and that if they wish greater flexibility they should consider applying to open up new genres of programming to competition under the criteria set out in Broadcasting Public Notice 2008-100.

*Treatment of applications for new Category A services*

92. The Commission notes that in Broadcasting Information Bulletin 2010-198, it indicated that it would be prepared to consider applications for new Category A services in October 2011. In light of the Commission's determinations regarding genre exclusivity and its intention to review its genre exclusivity policy within the next few years, the Commission does not intend to consider applications for new Category A services until after it has completed its review of that policy.

***Independent production***

93. Section 3(1)(i)(v) of the *Broadcasting Act* states that "the programming provided by the Canadian broadcasting system should [...] include a significant contribution from the Canadian independent production sector." As set out in Broadcasting Public Notice 2008-4, an independent production company is defined as a production company in which a television licensee owns or controls, directly or indirectly, less than 30% of the equity. This definition was retained in the group-based policy.

94. Over the years, the Commission has adopted several approaches for encouraging a significant contribution from the independent production sector to the Canadian broadcasting system, including:

- directing broadcasting distribution undertaking (BDU) contributions to independent production funds;
- expectations on exhibition from the larger ownership groups of priority programming;
- expectations, requirements, or commitments on programming expenditures;
- conditions of licence or encouragements for the use of independent producers; and
- approval of tangible benefits to be dispersed to the independent production sector.

95. Currently, conventional television stations owned by the large English-language broadcasting groups are expected to ensure that at least 75% of the priority programming they broadcast is produced by independent production companies.

96. Those specialty services originally approved as Category 1 services are subject to a standard condition of licence, set out in Public Notice 2000-171, requiring that no less than 25% of all Canadian programs broadcast by the licensee, other than news, sports

and current affairs (usually produced in-house), be produced by non-related production companies.<sup>8</sup>

97. For the remaining specialty and pay television services, obligations relating to the broadcast of independent production have been determined on a case-by-case basis. Many analog services are subject to individual conditions of licence and expectations consistent with the approach set out in Broadcasting Public Notice 2004-2, where the Commission adopted a case-by-case approach in order to consider the inherent differences between one genre of specialty programming and another. Individual conditions of licence were measured against the benchmark that 75% of original programming would be independently produced. Category B services are not subject to any requirements in this regard.
98. As discussed above, in the group-based policy, the Commission introduced the requirement that large broadcast ownership groups allocate at least 75% of their required PNI expenditures to independently-produced programs. The Commission further stated that specialty services that currently have individual requirements relating to independent production would retain these requirements.
99. In their applications, the three designated groups all proposed the deletion of the individual requirements that apply to their specialty services, arguing that the new CPE and PNI expenditure requirements would be sufficient to ensure the continued support of independent producers. In this regard, they further argued that the additional layer of individual obligations was inconsistent with the Commission's objective of increased flexibility for broadcasters. The Rogers Media group also supported the position that the individual requirements were unnecessary in light of the new group PNI expenditure requirement.
100. The Canadian Media Production Association (CMPA), the Documentary Organization of Canada (DOC), the Canadian Association of Film Distributors and Exporters (CAFDE) and the Ontario Media Development Corporation (OMDC) all opposed the elimination of the individual specialty obligations, arguing that these obligations were complementary to the new PNI expenditure requirement and vital to ensuring ongoing support of the creative community.
101. The Commission remains of the view that the individual obligations imposed on specialty services are an important factor in supporting the independent production sector and that they will contribute to the ongoing support of independently produced content in categories other than drama, documentaries and award shows. Consequently, and consistent with its determinations set out in the group-based policy, the Commission determines that it is appropriate to retain the existing requirements relating to independent production. These can be found in the above-noted individual licence renewal decisions for each of the groups.

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<sup>8</sup> For the purpose of that standard condition of licence, "non-related" means that the licensee or its shareholders control, directly or indirectly, no more than 30% of the equity.

### ***Regional production***

102. In the group-based policy, the Commission reiterated its view that the large broadcasting ownership groups, as national broadcasters, have a critical role to play in ensuring that all regions of the country are reflected in their programming. The Commission thus set out its general expectation that these groups commission PNI from all regions of Canada, engaging in levels of production activity that are commensurate with their presence in their respective markets.
103. Representatives of the production industry noted that, notwithstanding this general expectation, there has been a decline in regional production volume and that broadcasters are less and less available for meetings in the regions, due in particular to increased consolidation. They requested that the Commission require broadcasters to commit to quantifiable regional objectives, including specific commitments to regional production, access to development funding for producers from markets outside Toronto, as well as on-going producer outreach in the regions. Producers described the difficulties in talking to decision makers, especially since most of the broadcasters no longer have production offices outside Toronto. Representatives of English-language minority language communities and producers in Quebec also raised specific concerns about English-language production in Quebec, noting that the Commission's current definition of regional production excludes English-language production in Montréal.
104. As part of their applications and in response to questions at the hearing, the licensees provided information on their regional production plans, including production for official language minority communities (OLMCs) and outreach initiatives. While the Commission has decided not to impose specific obligations in regard to regional or OLMC production, it is concerned about the decline in such production and wishes to monitor the situation more closely prior to the next round of licence renewals.
105. In order to accomplish this, the Commission requires each of the four ownership groups to file detailed regional production plans that include information on proposed outreach efforts for the coming broadcast year. This information should consist of specific details on the number and nature of outreach efforts, including attendance at regional production-related festivals, conferences, and/or visits by programming executives to actively engage with regional producers, including OLMC producers. This information should also describe projects in development with regional producers, and actual production activity in the regions. These regional production plans are to be filed with the Commission by no later than **31 December 2011**, with annual reports on the implementation of the plans filed by no later than **30 November each year thereafter**.
106. Finally, the Commission notes that the question of its definition of regional programming has been raised several times, and has determined that it would be appropriate to amend that definition to ensure that its approach to English-language programming in a minority situation is consistent with its approach to French-language production. Accordingly, the Commission hereby adopts the following

definition of “regional production,” in order to permit English-language production in Montréal to count as regional production:

English-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Toronto or Vancouver. Programs in which the principal photography occurred on Vancouver Island will also be considered regionally produced programs;

French-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal;

Programming drawn from program category 1 News, 2 Analysis and interpretation, 3 Reporting and actualities, and 6 Sports, are excluded.

107. Given that the Commission is not imposing specific obligations relating to regional and/or OLMC production, its revised definition will have little direct impact on the volume or nature of such production. However, given that the broadcast and funding of Canadian programs are closely linked, the Commission is of the view that it is also important that the CMF amend its definition of regional production in a manner that renders it comparable to the Commission’s definition, above, so as to ensure the appropriate support of OLMC production objectives. Accordingly, the Commission encourages the CMF to review its definition of regional production.

#### ***Commitments to Canadian exhibition***

108. In the group-based policy, the Commission announced that it would reduce the Canadian content obligation for conventional television broadcasters from 60% to 55% over the broadcast year,<sup>9</sup> while maintaining the evening broadcast period requirement of 50%. For Category A services, the Commission indicated that obligations would continue to be tailored to reflect the character of each service.
109. As part of their applications, the Bell Media group and the Corus group proposed reductions to the Canadian exhibition requirements for several of their services, arguing that their proposed amendments are consistent with the Commission’s approach to conventional television stations. In addition, the groups proposed changes to certain services that are “outliers” in the sense that they are required to meet unusually high levels of Canadian programming. For example, the Shaw Media group proposed to reduce the Canadian exhibition obligation of Slice from 82.5% to 60% of the broadcast day and of the evening broadcast period, arguing that these exhibition levels are significantly higher than the average requirements for other Category A services, and the highest of all non-news services. Similarly, the Bell Media group

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<sup>9</sup> The Commission has amended the *Television Broadcasting Regulations, 1987* to reflect this new level, which will come into force on 1 September 2011.



proposed a reduction in the Canadian programming exhibition requirement for the evening broadcast period for Business News Network (BNN) from 75% to 65%.

110. Producers, unions and guilds, and other representatives of the creative community opposed any reductions to Canadian exhibition obligations. They argued that Category A services benefit from important regulatory advantages, such as genre protection and access rights, that are tied to their programming commitments. They also noted the positive financial health of the specialty services sector overall and argued that the group-based policy did not contemplate harmonizing the obligations of specialty services and conventional television stations.
111. While the group-based policy does emphasize greater flexibility for individual services and focuses on spending rather than exhibition, the Commission notes that it did not contemplate lower Canadian exhibition requirements for specialty services, or harmonizing all of the obligations for television services. Accordingly, with the exception of the requests regarding Slice and BNN, the Commission will deny requests to reduce current exhibition levels. In the case of Slice, the Commission notes that its current levels of Canadian exhibition are considerably higher than those of other Category A services. Further, the proposed level of 60% is more consistent with that of other such services and would still ensure a predominance of Canadian programming on the service. In the case of BNN, the Commission is of the view that the proposed reduction would contribute to an improvement of the service by reducing the number of program repeats, while still ensuring a significant amount of Canadian programming in the evening broadcast period.
112. The Commission notes that the licensees of two services – The Comedy Network (the Bell Media group) and Outdoor Life Network (the Rogers Media group) – proposed to remove or reduce requirements that drama programming, or a portion of drama programming, be Canadian. The Commission determines that these obligations should remain in place as a mechanism to ensure continued programming diversity rather than the recycling of U.S. drama programming across Canadian channels.
113. The Commission also determines that it is appropriate to increase the exhibition requirements that apply to Twist TV. This service was permitted to reduce its Canadian exhibition requirement from 65% to 35% of the broadcast day and of the evening broadcast period in 2006, in light of the limited availability and short shelf life of health programming. The Commission indicated at that time that it would review this condition of licence at the next licence renewal for the service. The Commission is of the view that the 35% level is inconsistent with the obligations of a Category A service. It further notes that the service’s programming strategy is less focused on health programming, and more centred on the general theme of “wellness.” As a result, the rationale behind the original reduction in the exhibition level of Canadian programs is no longer applicable. Accordingly, the Commission requires that the service increase its exhibition of Canadian programming to 50% of the broadcast day and of the evening broadcast period, effective in the second year of the new licence term. A condition of licence to this effect is set out in Broadcasting Decision 2011-448.

### ***Terms of trade agreements***

114. Terms of trade agreements relate to the establishment of terms and guidelines between broadcasters and producers in regard to negotiating rights over programming and digital media. The development of mutually acceptable terms of trade agreements has become an increasingly important issue in recent years as producers and broadcasters seek to monetize their respective expenditures and efforts across multiple platforms.
115. In Broadcasting Public Notice 2007-53, and in a number of policies and decisions issued since May 2007, the Commission has stated that the establishment of terms of trade agreements between independent Canadian television programming producers and broadcasters would provide stability and clarity for both producers and broadcasters and would be in the broadcasting industry's interest as a whole.
116. The Commission announced in Broadcasting Notice of Consultation 2010-952-1 that, in the event that any of the four broadcasting groups for which the broadcasting licences were being renewed had not reached terms of trade agreements with independent producers before the hearing, it would require these groups to file substantive proposals as part of the record of the proceeding. The Commission further stated that it would then establish appropriate provisions for terms of trade as part of its determinations in the licence renewal decisions for the services operated by these four broadcast groups.
117. Prior to the hearing, the CMPA, the designated groups and the Rogers Media group, as well as Astral Media Inc., filed a tentative agreement that was subject to drafting for consistency of application and general editorial matters. A final executed agreement was filed with the Commission on 29 April 2011. With the initial filing, the CMPA also requested that the Commission require adherence to the final terms of trade agreement as a condition of licence for each of the four broadcast groups. The CMPA argued that a condition of licence would be the only way to ensure the stability and clarity that the Commission and the parties seek on this subject over the course of the broadcasters' next licence terms.
118. At the hearing, the Commission explored the feasibility of imposing adherence to the agreement as a condition of licence with each of the four groups. The broadcasters generally argued that a condition of licence was unnecessary.
119. Given the stability and clarity for producers and broadcasters that is ensured by a mutual terms of trade agreement, and given that such an agreement is in the best interest of the Canadian broadcasting system, the Commission is of the view that a condition of licence requiring adherence to a terms of trade agreement should apply to all licensees. The Commission notes that the agreement filed as part of this proceeding includes specific dispute resolution mechanisms. Accordingly, the Commission expects parties to pursue any related disputes as per the terms of the agreement and/or through the courts, before seeking any Commission assistance on matters within the Commission's jurisdiction.

120. Finally, the Commission wishes to commend the parties for coming together to craft a deal that will help the Canadian production and broadcasting sector take advantage of the many opportunities available, and face the challenges associated with the digital media age.

***Local programming and the Local Programming Improvement Fund***

*Measurement of local programming*

121. In Broadcasting Regulatory Policy 2009-406, the Commission harmonized the obligations relating to local programming for metropolitan and non-metropolitan markets, at seven and fourteen hours per broadcast week, respectively. In that regulatory policy, the Commission also indicated that local stations were required to meet their local programming levels to be eligible to access the LPIF.
122. As part of its application, the Bell Media group proposed that the local programming obligations be measured over the broadcast year, rather than over the broadcast week. It argued that this would provide stations with the flexibility to temporarily reduce the amount of local programming broadcast during holiday periods, or to cover special events. The Shaw Media group, in its intervention, supported this proposed amendment and argued that it should be made standard for all groups.
123. The Commission notes that any change to the measurement of local programming could have an impact on the way in which the LPIF is managed and administered. Measuring local programming over the broadcast week permits periodic monitoring and evaluation to verify compliance with local programming obligations, whereas measurements done annually can only be verified at the end of the broadcast year. The Commission further notes that broadcasters can plan ahead for holiday periods and special events, and schedule types of local programming other than live news. Finally, the Commission's decision to measure local programming over the broadcast week is a reflection of the importance of local programming to Canadian communities. Accordingly, the Commission determines that it is appropriate to continue requiring that local programming obligations be measured over the broadcast week for the immediate future.
124. As noted above and in the group-based policy, the Commission has committed to a review of the LPIF in the 2011-2012 broadcast year. The Commission intends to issue a notice of consultation later this year to address such issues, and interested parties will have an opportunity to comment at that time.

*Request to expand Local Programming Improvement Fund eligibility*

125. In its application, the Shaw Media group proposed that the Commission amend its definition of non-metropolitan markets to recognize, in particular, the realities of the Anglophone population of Montréal. It proposed the following definition:

Non-metropolitan markets are those television markets in which the population that speaks the official language of the station most often at home is less than one million.

126. Noting the size of the Anglophone population of Montréal, the Shaw Media group requested in particular that CKMI-TV-1 Montréal be considered as operating in a non-metropolitan market, and therefore be eligible for LPIF funding.
127. In their joint appearance at the hearing, the English-Language Arts Network of Quebec and the Quebec English-language Production Committee also argued that the Commission's LPIF eligibility definition needs to be based on first official language spoken, rather than knowledge of that language, so that Anglophone Montréal could be eligible for funding.
128. As noted above, the Commission has committed to a review of the LPIF in the coming broadcast year. Accordingly, it is of the view that this issue would be more appropriately addressed within the context of that review.

#### **Digital transition**

129. The Commission has set 31 August 2011 as the date for conversion to digital in mandatory markets and for channels 52 to 69. The vacated spectrum will be repurposed for advanced wireless services and public safety needs. In Broadcasting Notice of Consultation 2010-952-1, the Commission sought comment on broadcasters' digital transition plans. During the hearing, broadcasters confirmed their plans to convert to digital in mandatory markets and to vacate channels 52 to 69, by 31 August 2011.
130. The Commission is encouraged by broadcasters' digital conversion plans and will follow the progress of broadcasters' efforts over the course of the next few months. In light of the Commission's digital transition policy, broadcasters have agreed to cease analog transmission in the affected markets, in accordance with the following condition of licence:

Unless otherwise authorized by the Commission, the licensee shall not transmit analog television signals after 31 August 2011 in the mandatory markets designated as such by the Commission in *Over-the-air television service in Whitehorse, Yellowknife and Iqaluit*, Broadcasting Regulatory Policy CRTC 2011-184, 14 March 2011, or transmit television signals on channels 52 to 69.

#### **Accessibility**

131. The Commission's general policy regarding accessibility of telecommunications and broadcasting services is set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy). In regard to the group-based policy, the Commission has considered three issues relating to accessibility: closed captioning, described video and audio description.

### ***Closed captioning***

132. Within the context of the present proceeding, the Commission has addressed the issue of closed captioning in terms of the quantity and the quality of captioning.
133. In regard to quantity, the Commission indicated in Broadcasting Public Notice 2007-54 that it would require all broadcasters, including third-language broadcasters, to caption 100% of their English-language and French-language programs over the broadcast day.
134. In regard to quality, the Commission is of the view that, as stated in Broadcasting Public Notice 2007-54, “poorly captioned programming is the same as uncaptioned programming – when captioning cannot be comprehended [due to low quality], the programming it accompanies becomes inaccessible.” In that public notice, the Commission directed the broadcasting industry to establish working groups to, among other things, ensure consistent and reliable captioning quality throughout the system. In the Accessibility Policy, the Commission found that some of the proposed standards submitted by the working groups required further attention, and it therefore directed the working groups to file revised and completed standards for its approval. Once approved, the standards are to be applied as conditions of licence for all television programming undertakings. The working groups have submitted their final reports on the matter and the Commission expects to initiate a public process in the near future to finalize the standards.
135. The Commission notes that some parties to the present proceeding proposed closed captioning standards and commented on the process to date of the development of closed captioning standards. However, the Commission is of the view that the issue of standards development falls outside of the scope of this proceeding and would be better addressed during the above-noted public process on the matter.
136. The Commission further notes that during the course of this proceeding, the applicants committed to adhere to the conditions of licence and expectations regarding closed captioning set out in Broadcasting Public Notice 2007-54, and to the Accessibility Policy conditions of licence and expectations, with one exception relating to advertising, sponsorships and promos. With respect to the expectation regarding the captioning of these messages, the applicants have now committed to caption all advertising, sponsorship messages and promos in the English-language and in the French-language by no later than the fourth year of the licence term.
137. These commitments have been implemented through the conditions of licence and expectations set out in the above-noted individual licence renewal decisions for each of the groups.

### ***Described video***

138. Described video is typically a post-production technique whereby a narrator provides a description of a program’s key visual elements so that persons who are blind or have visual impairments can understand what is occurring on the screen. It is best

suited for programs such as drama, documentaries and children's programming that contain significant visual elements that are key to the storyline. In the Accessibility Policy, the Commission considered it appropriate to add program categories 9 Variety and 11 General entertainment and human interest to the list of program categories from which broadcasters were, at the time of the issuance of that policy, allowed to fulfill their described video commitments. Therefore, since 2009, the Commission has permitted the following program categories, as well as programming targeting children, to be used to fulfill described video commitments:<sup>10</sup>

- 2 (b) Long-form documentary
  - 7 (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
  - (g) Other drama
  - 9 Variety
  - 11(a) General entertainment and human interest
  - (b) Reality television
139. In 2001, the Commission began imposing on major English-language conventional television stations, by condition of licence, minimum described video requirements by the end of the licence term of four hours per broadcast week, of which 50% was to be original to the service. In 2004, it began imposing such requirements on Category A English-language specialty services. In the Accessibility Policy, the Commission indicated that it intended to continue to apply the existing requirement of four hours per broadcast week rather than increase obligations, due to the difficult economic environment in which broadcasters were operating at the time.
140. In regard to the wording of the current described video condition of licence, in the present proceeding, some of the broadcasters proposed to average their described programming over the broadcast year.
141. Media Access Canada (MAC) submitted that licensees should implement annual incremental increases in the hours of original described video. It presented a number of factors that it submitted supported its request, including its understanding that programming funded or acquired through the CMF is required to include video

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<sup>10</sup> In Broadcasting Notice of Consultation 2010-470, the Commission proposed to amend program category 11 to make the distinction between documentary-style reality television and long-form documentaries clearer. In this regard, in Broadcasting Regulatory Policy 2010-808, the Commission amended the definition for television categories to include a proposed program category 11(b), which would comprise programming categorized as "Reality television," and noted that it would amend the *Television Broadcasting Regulations, 1987*, the *Pay Television Regulations, 1990* and the *Specialty Services Regulations, 1990*, to include the new program category 11(b) in the list of categories from which services may draw programming. In Broadcasting Regulatory Policy 2011-401, the Commission formally announced the above-noted amendments, and noted that they would come into force on 1 September 2011.

description. MAC also stated that the cost of described video should be in parity with closed captioning.

142. In a joint reply, the designated groups and the Rogers Media group submitted that while CMF funded programming is required to be closed captioned, there is no CMF requirement that funded programming include a described version so that even if a program is CMF funded or acquired, broadcasters must still underwrite the cost of described video production. They further submitted that closed captioning and described video are entirely different activities operating on completely different modes of production, and that there was no evidence as to how cost parity could be achieved.
143. The Commission notes that the Accessibility Policy is still being implemented. It is of the view that there is insufficient evidence on the record of this proceeding to support an increased described video requirement at this time. It will, as stated in the Accessibility Policy, continue to monitor the economic situation faced by television broadcasters. Similarly, when it appears that resources may be available for the purpose of providing increased described video, for example, through technical or other developments lowering the costs of providing described video, the Commission intends to conduct a further proceeding to consider increasing the minimum amounts of described video that licensees must provide and expanding the types of specialty services to which it would apply described video requirements.
144. In the meantime, the Commission has set out an expectation to the effect that the broadcasters' annual spending on described video should not decrease over the period of their licence terms. Thus, should the cost of described video decrease, broadcasters will be expected to use the savings to provide more described video. To be able to track the cost of and spending on described video, the Commission directs each of the three designated groups and the Rogers Media group to file, as part of their annual returns, the costs relating to described video, specifying the total number of hours of described programming provided.
145. With respect to the broadcasters' request for flexibility in applying the described video requirement, the Commission is of the view that there is insufficient evidence of the benefit of such flexibility to warrant averaging the described video requirement over the broadcast year. Further, the Commission is of the view that the current condition of licence will ensure that persons who are blind or visually-impaired will have access to described programming throughout the broadcast year, on a weekly basis.
146. The Commission therefore requires licensees to provide a minimum of four hours of described video per broadcast week, of which two hours is to be programming broadcast in described video for the first time on the service.
147. The determinations outlined above have been implemented through the conditions of licence and expectations set out in the above-noted individual licence renewal decisions for each of the groups.

### **Audio description**

148. Audio description, often confused with described video, refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs. In the Accessibility Policy, the Commission stated its intention to require television licensees to implement audio description for all key elements of information programs, including news programming, by conditions of licence at the time of their next licence renewal.
149. Sky TG 24 Canada submitted that it was impossible to comply with a condition of licence requiring it to provide audio description of the key elements of information programming, given the nature of its service and the source of its content. It stated that up to 85% of all of its programming is non-Canadian content provided directly from a foreign feed, and does not include audio description on any information programs. Further, it stated that it does not itself produce any information programs, including news.
150. Given that the ability of broadcasters to influence foreign programming is limited, the Commission, on a going forward basis, requires licensees to provide audio description for all the key elements of *Canadian* information programs, including news programming. This determination has been implemented through the conditions of licence set out in the above-noted individual licence renewal decisions for each of the groups.

Secretary General

### **Related documents**

- *CJBN-TV Kenora – Licence renewal*, Broadcasting Decision CRTC 2011-448, 27 July 2011
- *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-447, 27 July 2011
- *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011
- *Shaw Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-445, 27 July 2011
- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 2011
- *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011



- *Standard conditions of licence, expectations and encouragements for conventional television stations*, Broadcasting Regulatory Policy CRTC 2011-442, 27 July 2011
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *Amendments to certain Regulations made under the Broadcasting Act to add a new program category “Reality television”*, Broadcasting Regulatory Policy CRTC 2011-401, 30 June 2011
- *Change in effective control of CTVglobemedia Inc.’s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2010-952, 22 December 2010, as amended by Broadcasting Notices of Consultation CRTC 2010-952-1, 24 December 2010, 2010-952-2, 7 January 2011, 2010-952-3, 29 March 2011, 2010-952-4, 15 April 2011, and 2010-952-5, 4 May 2011
- *Call for comments on amendments to the Broadcasting Distribution Regulations*, Broadcasting Notice of Consultation CRTC 2010-931, 10 December 2010
- *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-786, 25 October 2010
- *Change in the effective control of Canwest Global Communications Corp.’s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2010-782, 22 October 2010
- *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
- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news – Implementation of the Accessibility Policy and other matters*, Broadcasting Regulatory Policy CRTC 2009-562-1, 18 June 2010
- *Amendment to the timeframe for consideration of new Category A services*, Broadcasting Information Bulletin CRTC 2010-198, 31 March 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010

- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news*, Broadcasting Regulatory Policy CRTC 2009-562, 4 September 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Amendments to the Television Broadcasting Regulations, 1987 – Implementation of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-98, 31 August 2007
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Canadian Learning Television – Licence renewal*, Broadcasting Decision CRTC 2004-17, 21 January 2004
- *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004
- *TechTV Canada – a new specialty channel*, Decision CRTC 2000-454, 14 December 2000
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000
- *Canadian Learning Television – Approved*, Decision CRTC 96-600, 4 September 1996

*\*This decision is to be appended to the licence for each of the services for which the licences are renewed in Broadcasting Decisions 2011-444, 2011-445, 2011-446 and 2011-447.*