



Broadcasting Decision CRTC 2012-339

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Route reference: 2012-126

Ottawa, 21 June 2012

Rogers Broadcasting Limited
Province of Saskatchewan

Application 2012-0045-1, received 17 January 2012
Public hearing in Toronto, Ontario
7 May 2012

Saskatchewan Communications Network – Acquisition of assets

*The Commission **approves** the application by Rogers Broadcasting Limited for authority to acquire from Bluepoint Investments Inc. the assets of Saskatchewan Communications Network, a satellite-to-cable programming undertaking that broadcasts educational programming in Saskatchewan. A new broadcasting licence will be issued subject to the terms and **conditions** set out in the appendix to this decision.*

The application

1. The Commission received an application by Rogers Broadcasting Limited (RBL) for authority to acquire from Bluepoint Investments Inc. (Bluepoint) the assets of Saskatchewan Communications Network (SCN), a satellite-to-cable programming undertaking that broadcasts educational programming in Saskatchewan, and for a new broadcasting licence to continue the operation of the undertaking.
2. SCN is currently owned by Bluepoint and is controlled by Mr. Bruce Claassen, the sole shareholder of Bluepoint.
3. RBL is wholly owned and controlled by Rogers Communications Inc.
4. The Commission received numerous interventions in support of this application, three interventions offering general comments, as well as one intervention in opposition. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

5. After examining the application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

- RBL's proposal to replace Bluepoint's commitments with new conditions of licence and the associated question relating to the integrity of the licensing process;
- assessment of the proposed tangible benefits package;
- regional programming;
- maintenance of SCN as an educational service; and
- licence term.

RBL's proposal to replace Bluepoint's commitments with new conditions of licence and the associated question relating to the integrity of the licensing process

Background

6. In Broadcasting Decision 2010-965, the Commission approved an application by Bluepoint to acquire the assets of SCN from the Province of Saskatchewan for a purchase price of \$350,000, and for a new broadcasting licence to continue the operation of the undertaking. In that decision, the Commission permitted Bluepoint to broadcast up to 63 hours per week of commercial content and to air up to 14 minutes of advertising per hour during such programming. The Commission also concluded that no tangible benefits package would be required. However, the decision included an expectation that Bluepoint fulfill its commitments to spend \$1.75 million per year on independent Saskatchewan production and \$1 million per year on digital production in Saskatchewan over a seven-year period. The Commission also required, by condition of licence, that Bluepoint report annually on its progress in fulfilling the above-mentioned commitments.
7. In its application, RBL stated that it would accept most of the terms and conditions of the existing licence. However, it requested that the commitments set out in Broadcasting Decision 2010-965 regarding independent and digital production in Saskatchewan not be included as an expectation under its new licence. RBL further requested that the condition of licence requiring the licensee to file an annual report describing the licensee's progress in fulfilling those commitments not be included.
8. To support its request, RBL underlined SCN's weak financial position in the market, stating that Bluepoint had overestimated its ability to fulfill the commitments that it had made. RBL stated that half of SCN's weekly schedule was commercial-free, making the fulfillment of Bluepoint's commitments financially untenable for them.
9. Notwithstanding these requests, RBL stated that it was prepared to undertake significant new obligations in support of Saskatchewan independent production. RBL committed to uphold all programming commitments made by SCN for the 2011-2012 broadcast year, amounting to approximately \$2,111,800 on Canadian programming expenditures (CPE), of which \$1,368,972 would be spent on

Saskatchewan independent production, \$610,200 of which, in turn, would be spending on Programs of National Interest (PNI). In the remaining years of its licence term, RBL committed to spend 23% of SCN's previous year's revenues on CPE. As part of these CPE expenditures, it further committed to spend at least 2.5% of SCN's previous year's revenues on PNI in the 2012-2013 broadcast year. This amount would increase to 3% of SCN's previous year's revenues in the 2013-2014 broadcast year. RBL committed to direct all of the above spending to independent production located in Saskatchewan for the duration of the licence term, ending 31 August 2014. In its final reply, RBL stated that it would agree to replace the PNI requirement with a requirement to spend money on educational programming in Saskatchewan. RBL stated that it would accept these commitments as conditions of licence.

10. RBL made additional commitments throughout the process, including a commitment to modernize SCN's operations by making capital investments of approximately \$1.4 million in order to offer SCN in high definition and to implement updates to SCN's traffic management system. RBL also committed to maintain SCN's operations and staff in Regina. In its final reply, RBL stated it would ensure the presence of a senior executive at SCN, who would be the primary point of contact for Saskatchewan producers.
11. In its application, RBL acknowledged that the transaction could potentially raise issues regarding the Commission's licence trafficking policy. However, it argued that the integrity of the original licensing process had not been undermined given that Bluepoint had attempted to implement its authority in good faith. RBL added that Bluepoint had operated in full compliance with its conditions of licence during the period, although it was unable to meet the expectations attached to the licence. It also argued that Bluepoint would not profit from the transaction, since it had spent more than the \$3 million proposed purchase price during the period that it had been operating SCN.
12. Several interveners expressed concern that the proposal would result in a loss to the production community in Saskatchewan. They argued that the commitments made by Bluepoint should be fulfilled regardless of ownership changes and that broadcasters should not be rewarded for failing to adhere to licence commitments. They added that RBL was in a better position to fulfill these commitments than Bluepoint because of its financial resources, its access to synergies and more popular programming, its broadcast management experience as well as its existing relationships with national advertisers. They further stated that RBL would greatly benefit from the transaction because SCN, as a component of RBL's evolving national footprint, would allow Citytv to better compete with other national broadcasters.
13. In a letter dated 3 May 2012, the Commission advised RBL and Bluepoint that it would discuss the integrity of the licensing process at the hearing. In particular, the Commission indicated it would discuss:

- whether the vendor would unreasonably gain from the sale of the regulated asset;
 - how this gain is rationalized relative to the reduced commitments proposed by RBL;
 - the rationale behind Bluepoint not fulfilling its commitments; and
 - information about SCN's investments in independent and digital production in Saskatchewan.
14. At the hearing, the Commission noted that the assessment of the value of the transaction submitted by the applicant indicated that \$2,163,338 was attributable to "goodwill and the CRTC licence." The Commission questioned the applicant as to whether the value was attributable to the Commission's previous decision to permit commercial programming and advertising and whether, as a result, more of this value should be passed on to the broadcasting system in the form of commitments to independent production, such as those Bluepoint had made.
15. RBL replied that it did not believe that the transaction was a loss to the people of Saskatchewan. It noted that the people would benefit from the transaction because RBL would continue to offer educational programming and ensure the on-going viability of the service. It added that, although the dollar amount of its CPE and educational programming commitments would initially be less than the commitments proposed by Bluepoint, the monies were likely to increase over time and these expenditure requirements would be enforceable as conditions of licence. Furthermore, the transaction would allow the independent production community to participate on the national stage through RBL's Citytv stations. RBL cautioned that imposing additional obligations on it as part of the transaction might result in it choosing not to go through with the purchase of the service.

Commission analysis and decisions

16. The Commission agrees with RBL that the transaction will benefit the people of Saskatchewan by, among other things, ensuring SCN's survival. It considers that RBL's proposal regarding CPE and educational programming is appropriate and represents a significant on-going benefit for production in Saskatchewan.
17. The Commission notes that, because of the short period remaining in the 2011-2012 broadcast year, a large portion of the monies included in RBL's CPE and PNI commitments for this broadcast may already have been spent by Bluepoint. As such, the Commission considers that it is appropriate to permit RBL to count these expenditures by Bluepoint towards fulfillment of its conditions of licence for the 2011-2012 broadcast year. The Commission also considers it appropriate to apply RBL's revised proposal to replace PNI with educational programming beginning only in the 2012-2013 broadcast year.

18. The Commission notes that these amounts are likely to grow over time and that RBL has made additional commitments, enumerated above, that will be beneficial to the Province of Saskatchewan.
19. However, the Commission considers that, in order to maintain the integrity of the licensing process and to properly reflect the fact that the value of the licence to RBL is to a large extent due to the Commission's decision to allow commercial programming and advertising on this educational service, RBL will be required to honour a portion of the commitments made by Bluepoint to independent production.
20. Accordingly, the Commission expects the applicant to invest an additional \$1 million in incremental independent production in Saskatchewan over the course of the licence term. With this additional investment, the Commission is satisfied that a portion of the value allocated to the licence will bring additional benefits to the Saskatchewan production community and to the people of Saskatchewan. The Commission also requires RBL to report annually on its progress in implementing this expectation until it has been fulfilled.
21. The Commission notes that no additional regulatory approval is required for RBL in the event that it renegotiates the purchase price as a result of the above-mentioned expectation.

Assessment of the proposed tangible benefits package

22. In Public Notice 1989-109, the Commission established that the purpose of the benefits policy is to allow the market to govern the transfer of broadcasting licences as part of ownership transactions while recognizing that broadcasting licences are public property. It also ensures that the applicant has filed the best overall proposal under the circumstances given the absence of a public call for competing applications. The Commission determined that the benefits to the broadcasting system should be commensurate with the size and nature of the transaction and set the value of the tangible benefits at 10% of the value of a transaction of the type considered in this decision. Such benefits should be directed to the communities served and to the broadcasting system as a whole.
23. The Commission, in applying its benefits test, has been consistent and rigorous in requiring that (1) expenditures proposed as tangible benefits be truly incremental; (2) such expenditures be directed to projects and initiatives that would not be undertaken or realized in the absence of the transaction; and (3) applicants demonstrate that expenditures proposed as tangible benefits flow predominantly to third parties, such as independent producers.
24. RBL stated that SCN was in financial distress and that its survival was at stake. For these reasons, it submitted that a tangible benefits package should not be required for the current transaction. Notwithstanding this position, RBL offered to direct 10% of the purchase price, or \$300,000, to be paid by the end of the proposed licence term (no later than 31 August 2014), to the Rogers Digital Development Fund. RBL

stated that this proposal was not intended to comply with the Commission's benefits policy but was rather made as a gesture of good faith and in recognition of the growing importance of digital production to the Saskatchewan television and film communities. RBL also submitted that there were significant intangible benefits associated with the transaction, such as those enumerated in paragraph 10 above. Finally, RBL argued that the proposed transaction was based on RBL not being required to pay benefits and added that any incremental cost to RBL could necessitate a renegotiation of the purchase price.

25. RBL stated that the Rogers Digital Development Fund would be a new fund designed to help build capacity and accelerate uptake of digital technology in Saskatchewan. The fund would assist Saskatchewan film and television companies in identifying new models and strategies for running their businesses and monetizing their digital products, particularly in the areas of business, finance and marketing. The fund would also assist companies at the content planning and development stages to better develop their ideas for interactive content and distribution. The fund would be administered by the SaskFilm and video development corporation (SaskFilm), which confirmed its intention to administer the proposed fund on behalf of RBL.
26. The applicability of the benefits policy was raised by interveners in the context of this proceeding. In addition, some interveners proposed that monies from the tangible benefits package should be directed principally to onscreen programming initiatives or to digital content creation. Some interveners also suggested that the benefits package could also be made available to independent producers outside Saskatchewan.
27. At the hearing, RBL stated that the fund is designed to assist Saskatchewan producers in the development, distribution and monetization of digital content. RBL further assured the Commission that it would work with SaskFilm to ensure that the fund meets the needs of the production community and that monies are targeted to initiatives that will have the most impact.
28. The Commission is satisfied with RBL's proposal. Accordingly, the Commission **directs** RBL to allocate the proposed \$300,000 to the Rogers Digital Development Fund over the course of seven consecutive broadcast years.

Regional programming

29. RBL did not propose any programming changes. Existing conditions of licence related to SCN's programming will therefore be re-imposed for the new licence term.
30. The Commission notes that, in Broadcasting Decision 2011-444, it imposed conditions of licence on ACCESS (now known as CTV Two Alberta), Alberta's designated educational service, similar to those under which SCN operates. However, the Commission also imposed a condition of licence on ACCESS

requiring that it broadcast 14 hours of regional programming (i.e., programming produced in Alberta) in each broadcast week.

31. RBL stated it would not accept a similar condition of licence to broadcast regional programming on SCN given that it had committed to direct the entire amount of its proposed CPE requirement to independent Saskatchewan production. RBL also considered that this commitment would be in keeping with the Commission's new policy emphasis on expenditure rather than exhibition requirements.
32. Some interveners raised concerns regarding the absence of an exhibition requirement for regional programming. RBL replied that its expenditure commitments, while different than those for ACCESS, are equally meaningful obligations.
33. The Commission is satisfied with RBL's proposed approach to regional programming, particularly in light of the additional expenditure requirement on Saskatchewan independent production discussed above. However, in Broadcasting Decision 2011-441, the Commission directed the four ownership groups to submit annual reports on the implementation of their regional production plans. Consistent with this approach, the Commission **directs** RBL to include details specific to Saskatchewan production for SCN in its future reporting.

The maintenance of SCN as an educational service

34. Most interveners expressed confidence in RBL's commitment to maintain SCN's educational mandate, although there were some concerns as to what would happen to the educational mandate upon completion of the licence term.
35. In reply, RBL indicated that it is committed to uphold SCN's educational mandate provided that SCN continues to be designated as the educational broadcaster for Saskatchewan and considered a "provincial authority" within the meaning of *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences) SOR/85-627*.
36. RBL noted that this designation entitles SCN to mandatory carriage by all distributors throughout the Province of Saskatchewan and is a core element of SCN's business model as an educational broadcaster. Accordingly, RBL submitted that any changes to these carriage terms would fundamentally alter its ability to uphold SCN's educational mandate.
37. The Commission notes that RBL has accepted a condition of licence requiring that SCN maintain its designation as Saskatchewan's educational broadcaster. The Commission is satisfied that this condition of licence will ensure that SCN will continue to pursue its educational mandate.

Licence term

38. RBL requested that its new licence expire in 2014, coincident with the expiry date of the other Citytv licences. During the hearing, the Commission questioned the

applicant about its proposed licence term. In reply, RBL stated that it would accept a seven-year licence term rather than the three-year term originally proposed.

39. In order to provide certainty and stability of funding for Saskatchewan audiences and the production community, and to ensure that the commitments benefit the people of Saskatchewan, the Commission is granting a full licence term to SCN.

40. Accordingly, the licence will expire **31 August 2018**.

Conclusion

41. In light of all of the above, the Commission **approves** the application by Rogers Broadcasting Limited for authority to acquire from Bluepoint Investments Inc. the assets of the satellite-to-cable programming undertaking known as the Saskatchewan Communications Network.

42. Upon surrender of the current licence issued to SCN, a new broadcasting licence will be issued subject to the terms and **conditions** set out in the appendix to this decision.

Secretary General

Related documents

- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *Saskatchewan Communications Network – Acquisition of assets*, Broadcasting Decision CRTC 2010-965, 23 December 2010
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

Appendix to Broadcasting Decision CRTC 2012-339

Terms, conditions of licence, expectations and encouragements

Terms

The licence will expire 31 August 2018.

Conditions of licence

1. The licensee shall adhere to the requirements of the *Television Broadcasting Regulations, 1987*.
2. The licensee shall maintain throughout the licence term the service's designations as the provincial educational broadcaster for Saskatchewan and as a "provincial authority" within the meaning of *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, SOR/85-627.
3. The licensee shall devote no less than 60% of the broadcast month to the broadcast of programming drawn from categories 2(a) Analysis and interpretation, 2(b) Long-form documentary, 5(a) Formal education and pre-school and 5(b) Informal education/Recreation and leisure. A minimum of 40% of this programming must be drawn from categories 5(a) and 5(b) and must be devoted to educational programming directed to pre-school children or to educational programming with clear learning objectives and comprising part of a formal learning system that leads to formal assessment and accreditation by an educational institution.
4. The licensee shall devote no less than 50% of the broadcast week to commercial-free educational programming, most of which shall be aired during the daytime period from 6 a.m. to 3 p.m.
5. Where it broadcasts commercial programming, the licensee shall not broadcast more than 14 minutes of national or regional advertising material in any clock hour in a broadcast day or more than 882 minutes of advertising material in a broadcast week.
6. The licensee shall not broadcast any advertising material during programming directed to persons under 12 years of age.
7. The licensee shall file an annual report describing the service's efforts to connect programming drawn from program category 7 (Drama and comedy) to learning opportunities made available by educators in Saskatchewan.
8. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission.

9. The licensee shall adhere to the Canadian Association of Broadcasters' *CAB Violence Code*, as amended from time to time and approved by the Commission.
10. The licensee shall adhere to a terms of trade agreement with the Canadian Media Production Association.
11. The licensee shall close caption 100% of all programs broadcast between 7 p.m. and 11 p.m. It shall also close caption 100% of all programs broadcast over the broadcast day by 1 September 2013, consistent with *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
12. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, as amended from time to time and approved by the Commission.
13. The licensee shall ensure that advertising, sponsorship messages and promos are captioned by no later than the fourth year of the licence term.
14. The licensee shall have a monitoring system in place to ensure that for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches, in its original form, the distributor of that signal and, in the case of an over-the-air signal, the viewer. "Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor and the viewer unaltered, whether it is passed through in analog or in digital, including in high definition.
15. The licensee shall provide 4 hours of described video per week by no later than 23 December 2014. To fulfill this condition, the described programming may be drawn from program categories 2(b) Long-form documentary, 7 Drama and comedy, 9 Variety and 11 General entertainment and human interest or may consist of programming targeting children drawn from any program category.
16. The licensee shall provide audio description for all the key visual elements of Canadian information programs, including news programming. For the purposes of this condition of licence, "audio description" refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.
17. The licensee shall devote to the acquisition of or investment in Canadian programming:

- a) in the 2011-2012 broadcast year, \$2,111,800, \$1, 368,900 of which must be spent on Saskatchewan independent production,¹ and
 - b) in each subsequent broadcast year of the licence term, 23% of the licensee's previous year's gross revenues.²
18. In the 2011-2012 broadcast year, the licensee shall devote \$610,200 to the acquisition of programs of national interest as defined in paragraphs 71 to 73 of *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010.³
19. The licensee shall devote to the acquisition of or investment in Saskatchewan educational programming produced in Saskatchewan and intended for residents of that province:
- a) in the 2012-2013 broadcast year, 2.5% of the licensee's previous year's gross revenues;⁴ and
 - b) in each subsequent broadcast year of the licence term, 3% of the licensee's previous year's gross revenues.
20. All programming expenditures in conditions of licence 17(b), 18 and 19 must be made to an independent production company or companies carrying on business in Saskatchewan with a Saskatchewan business address and owned and operated by a resident of Saskatchewan.
21. (a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programming, programs of national interest or on educational programming that is up to 5% less than the minimum required expenditure for that year calculated in accordance with conditions 17, 18 and 19 respectively; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure;

¹ For the purpose of calculating the total amount spent by RBL in the 2011-2012 broadcast year towards fulfilling conditions of licence 17(a), monies spent by the previous licensee, Bluepoint, in the broadcast year 2011/2012 will be deemed to have been spent by RBL.

² For the purpose of calculating the amounts spent on CPE and educational programming for this condition of licence, the licensee's gross revenues for the 2011-2012 broadcast year are deemed to include the revenues of the previous licensee, Bluepoint, in that broadcast year.

³ For the purpose of calculating the total amount spent by RBL in the 2011-2012 broadcast year towards fulfilling conditions of licence 18, monies spent by the previous licensee, Bluepoint, in the broadcast year 2011/2012 will be deemed to have been spent by RBL.

⁴ For the purpose of calculating the amounts spent on CPE and educational programming for this condition of licence, the licensee's gross revenues for the 2011-2012 broadcast year are deemed to include the revenues of the previous licensee, Bluepoint, in that broadcast year.

(b) In each broadcast year of the licence term, excluding the final year, where the licensee expends an amount for that year on Canadian programming, programs of national interest or on educational programming that is greater than the minimum required expenditure as set out in conditions 17, 18 and 19 respectively, the licensee may deduct an amount that does not exceed 5% of the minimum required expenditure in that year from the minimum required expenditure for the following year of the licence term.

(c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programming, programs of national interest or on educational programming, at a minimum, the total of the minimum required expenditures calculated in accordance with conditions of licence 17, 18 and 19.

Definition

For the purpose of these conditions of licence, “independent production company” is defined as a Canadian company carrying on business in Canada, with a Canadian business address, owned and controlled by Canadians, whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, less than 30% of the equity.

Expectations

The Commission expects the licensee to spend \$1 million over seven years on incremental independent production in Saskatchewan. This commitment is over and above the requirement to spend 23% of the previous year’s gross revenues on Canadian Programming Expenditures.

The Commission expects the licensee to fulfill its commitment to modernize SCN’s operations by making capital investments of approximately \$1.4 million in order to offer SCN in high definition and to implement updates to SCN’s traffic system.

The Commission expects SCN to maintain its operations and staff in Regina.

The Commission expects RBL to ensure the presence of a senior executive at SCN to be the primary point of contact for Saskatchewan producers.

Encouragements

The Commission encourages the licensee to continue to consider proposals in any language for broadcast, including programming proposals that reflect the realities and celebrate the culture and heritage of Native, Francophone and ethnic communities in Saskatchewan.

Once the licensee is technically capable of providing described video, the Commission encourages the licensee to display the standard described video logo and air the audio announcement indicating the presence of described video following each commercial break.