



Broadcasting Regulatory Policy CRTC 2012-596

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Route reference: 2012-366

Ottawa, 30 October 2012

Revised policy for large broadcast groups regarding Canadian programming expenditure over-expenditures for conventional television and specialty services

By majority decision, the Commission finds it appropriate to revise its current group-based policy as it relates to the level of over-expenditures that may be deducted from the required expenditures on Canadian programming or programs of national interest in the next broadcast year by removing the 5% limitation on the carry-over of such over-expenditures and the obligation to use them in the subsequent broadcast year.

Background

1. In Broadcasting Regulatory Policy 2010-167 (the group-based policy), the Commission set out a new conceptual model with respect to Canadian programming expenditures (CPE) and programs of national interest (PNI) expenditures for large private English-language ownership groups that hold conventional and specialty television licences. Under that model, large ownership groups are allowed to allocate the aggregate of their required CPE across individual programming undertakings, while ensuring that the full aggregate amount is spent. In addition to encouraging effective business judgments, this ensures that there is no reduction in overall spending on Canadian programming.
2. In Broadcasting Decision 2011-441, the Commission outlined the criteria for qualifying services under the new group-based policy. Qualifying services for the group-based approach were limited to conventional television stations and Category A services, as well as Category B services with more than one million subscribers. Moreover, as these qualifying services would now have the flexibility to allocate the aggregate of their required CPE/PNI across individual programming undertakings, the Commission established specific requirements with respect to over- and under-expenditures on CPE/PNI.
3. Prior to Broadcasting Decision 2011-441, specialty and pay television services were permitted to carry forward all over-expenditures on Canadian programming in one broadcast year to meet CPE requirements in any of the remaining broadcast years of the same licence term. In Broadcasting Decision 2011-441, the Commission stated that an authorization to carry forward over-expenditures (and to make up under-expenditures) would continue to be a useful tool for large private English-language ownership groups to manage CPE/PNI requirements, particularly in the case of multi-year projects. However, it also considered that an under- or

over-expenditure level of 5% would be sufficient for groups to manage CPE/PNI requirements, especially given that the designated groups would also be granted the flexibility to count CPE/PNI on one qualifying service towards the requirements of another service. In that same decision, the Commission also clarified that over-expenditures in any broadcast year could be used as a credit against CPE/PNI requirements in the subsequent broadcast year. Moreover, the Commission indicated that requirements relating to CPE, as well as to spending on PNI, were to be considered minimum spending requirements.

4. In Broadcasting Decisions 2011-444 and 2011-447, the Commission imposed a condition of licence relating to the above on the various qualifying conventional television and specialty services affiliated with the Bell Media Inc. (Bell) and Rogers Media Inc. (Rogers) broadcasting ownership groups. A list of these services is set out in Appendix 1 to those decisions. Consistent with the above-noted determinations, Bell's and Rogers' qualifying conventional television and specialty services currently receive a credit for expenditures that exceed the minimum CPE/PNI requirements. This credit is limited to 5% of minimum expenditures and must be used in the year after which the expenditure is made. The qualifying services belonging to the Astral Media inc., Corus Entertainment Inc. and Shaw Media Inc. groups are subject to the same requirement.

The applications

5. Subsequent to the publication of Broadcasting Decisions 2011-444 and 2011-447, the Commission received applications by Bell (2012-0374-4) and Rogers (2012-0579-0) seeking to amend the broadcasting licences for their qualifying conventional television and specialty services so that the 5% limitation or "cap" on the carry-over of CPE/PNI over-expenditures and the obligation to use over-expenditures in the subsequent broadcast year be deleted. The applicants did not propose any changes to the 5% limit on under-expenditures.
6. Noting that the group-based policy was intended to give greater flexibility to licensees in their support of Canadian programming, Bell submitted that the Commission's determination on CPE over-expenditures was not consistent with that policy and with its historical practices. It further submitted that the current 5% limit on the carry-over of CPE over-expenditures and the obligation to use any over-expenditure in the subsequent broadcast year limits its ability to commission the best projects as they become available, as well as poses difficulties in the program commissioning cycle. As an example, Bell indicated that due to the high cost of the rights to the Olympic Games and the fact that CPE requirements were based on the previous year's revenues, overall CPE would significantly exceed the required CPE amount, even when including the 5% over-expenditure allowance. It further noted that the issue of a cap on CPE over-expenditures was not discussed at the public hearing for group-based licensing and that licensees therefore did not have the opportunity to comment on this issue.

7. For its part, Rogers submitted that the 5% cap would limit its ability to operate its Citytv conventional television stations. Specifically, in its view, the cap does not offer sufficient flexibility and some of its expenditures were already committed to large budget productions during the first broadcast year of the licence term. Moreover, Rogers stated that the Commission's rationale for the 5% limit did not apply in its case since it was not one of the designated groups identified during the group-based licence renewal process and therefore was not able to allocate CPE/PNI expenditures between services.

Call for comments

8. After reviewing the applications submitted by Bell and Rogers, the Commission determined that their applications were essentially requests to amend part of the Commission's group-based policy relating to the implementation of CPE/PNI over-expenditures and that the interpretation of the conditions of licence in question could have an impact on a number of parties, including the other groups that operate under similar conditions and the production industry, which benefits from CPE and PNI requirements. As such, in Broadcasting Notice of Consultation 2012-366, the Commission considered it appropriate to launch a public process to consider the impact that approval of the applications by Bell and Rogers would have on its policy regarding CPE over-expenditures.

Interventions

9. The Commission received a number of interventions in response to Broadcasting Notice of Consultation 2012-366. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public proceedings."
10. Broadcasters all supported the removal of the 5% limit on the carry-over of over-expenditures and the obligation to use over-expenditures in the subsequent broadcast year. Several noted that notwithstanding the Commission's stated objective in the group policy, which was to introduce greater flexibility, these requirements were actually stricter than those previously applied and created a disincentive to overspend that was prejudicial to the independent production sector. They also argued that they needed greater flexibility to be able to commit to high-end Canadian programming and expensive multi-year projects. Finally, they noted that if the over-expenditure limit were removed, they would still meet their overall spending requirements over the course of the licence term.
11. In addition to supporting the elimination of the limit on the carry-over of over-expenditures, Shaw Media Inc. (Shaw) argued that the Commission should revise the under-expenditure requirement to permit under-expenditures of up to 10%.
12. For its part, TELUS Communications Company (TELUS) opposed the application by Bell but not the application by Rogers, noting that Rogers was neither subject to nor benefited from the group-licensing policy. TELUS argued that Bell was effectively seeking to increase its spending on marquee sports programming at the expense of

other Canadian programming. It stated that if the Commission saw any merit to the proposal, it should adopt a limit of 10% on over-expenditures.

13. The creative sector was divided. Some, such as the Association québécoise de l'industrie du disque, du spectacle et de la vidéo, the Communications, Energy and Paperworkers Union of Canada (CEP) and the Union des artistes, the Société des auteurs de radio, télévision et cinéma, the Association des réalisateurs et réalisatrices du Québec and the Alliance québécoise des techniciens et de l'image et du son (jointly, UDA/SARTEC/ARRQ/AQTIS), submitted that the policy provided needed certainty and stability for creators of Canadian programming and noted that the programming services at issue already benefited from considerable flexibility. These interveners also noted that the policy did not limit how much broadcasters can spend, but only how much they can reduce their spending over the rest of the licence term.
14. However, others in the creative sector, such as the Association des producteurs de films et de télévision du Québec, agreed with broadcasters that the policy represented a disincentive to overspend. In this respect, the Canadian Media Production Association (CMPA) noted that the previous policy did not raise any concerns with its members. The CMPA also indicated that it appreciated that the program commissioning cycle may require broadcasters to exceed their CPE/PNI spending obligations in certain years and that it did not believe it would be in the best interest of the system to create a regulatory barrier to this generally accepted phenomenon. Similarly, the Alberta Motion Picture Industries Association (AMPIA) argued in favour of additional flexibility so that broadcasters are not penalized for engaging in large-scale productions. However, AMPIA expressed some concern about ensuring the flow of spending over the licence term to provide the production industry with some stability.

Commission's analysis and decision

15. The Commission notes that the intent of the 5% limit on the carry-over of CPE/PNI over-expenditures was to reduce the variations in spending levels year-over-year and accordingly to ensure a certain degree of stability over the course of the licence term, particularly since the groups would already benefit from the additional flexibility to apply their spending across all of their services. Specifically, the over-expenditures of one or a number of services within a broadcast group may be applied against the expenditures of all the remaining services in the group, thereby reducing the CPE/PNI requirements of the remaining services. As a result, the over-expenditure limit is only significant when the services of the group as a whole spend more than 5% of the total expenditure requirements of the group.
16. Based on the comments received in this proceeding, however, the Commission is concerned that as an unintended consequence of this change, the 5% limit is being or will be treated as a cap on spending in any given year. As noted by several interveners, this could have a chilling effect on the production of high-end Canadian programming and multi-year projects as there is no incentive for broadcasters to go

over the 5% limit since they cannot use the over-expenditure over the remainder of the licence term.

17. Regarding the general concern that Olympic expenditures could lead to the production of less Canadian content over the rest of the licence term, the Commission notes that in its group-based policy, it decided to include Olympic revenue in the equation to determine CPE requirements and to exclude Category C services such as TSN, RDS and Rogers Sportsnet from the various groups. As such, only the revenues of conventional television stations factor in when it assessing the impact of the Olympics on calculating group CPEs, thus mitigating the impact of Olympic revenues in the CPE equation.
18. Further, with respect to the Rogers application and Rogers' submission that it was placed at a disadvantage by the Commission since it was not granted the same flexibility as the designated groups, the Commission agrees with Rogers' assessment and is of the view that the condition of licence relating to the 5% limit on the carry-over of CPE/PNI over-expenditures should be removed from the licence of its conventional Citytv stations as the rationale used by the Commission to impose it on other licensees does not apply to Rogers.
19. Finally, as regards the concerns raised by ADISQ, UDA/SARTEC/ARRQ/AQTIS and the CEP about the stability of the capital flowing to producers, the Commission is of the view that the 5% limit on under-expenditures is sufficient to ensure predictability and stability in the amount of capital that will be invested by broadcasters. Specifically, it is the Commission's view that its policy on under-expenditures is sufficient to ensure that broadcasters always contribute a minimum amount of capital to the system and that broadcasters make up any under-expenditures in the next broadcast year. As such, the Commission is of the view that Shaw's request to modify the under-expenditure rule to permit under-expenditures of up to 10% is not necessary.

Conclusion

20. In light of all of the above, the Commission finds, by majority decision, that it would be appropriate to modify its group-based policy to remove the current 5% limit on the carry-over of CPE/PNI over-expenditures. Accordingly, in Broadcasting Decisions 2012-597 and 2012-598, also issued today, the Commission has approved the applications by Bell and Rogers to this effect. Other licensees currently subject to this condition of licence may apply to have it removed.

Secretary General

Related documents

- *Bell Media Inc. – Licence amendment*, Broadcasting Decision CRTC 2012-597, 30 October 2012

- *Rogers Broadcasting Limited – Licence amendment*, Broadcasting Decision CRTC 2012-598, 30 October 2012
- *Call for comments on the Commission’s policy regarding Canadian programming expenditure over-expenditures for conventional television and specialty services from large broadcast groups*, Broadcasting Notice of Consultation CRTC 2012-366, 6 July 2012
- *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-447, 27 July 2011
- *Bell Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-444, 27 July 2011
- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010