



Broadcasting Decision CRTC 2006-24

Ottawa, 1 February 2006

Canadian Broadcasting Corporation Across Canada

Application 2005-0849-2

Broadcasting Public Notice CRTC 2005-93

28 September 2005

Country Canada – Licence amendments

*The Commission **approves** the application by the Canadian Broadcasting Corporation (CBC) for amendments to the licence for its national English-language Category 1 specialty service known as Country Canada. The licensee is currently required by its nature of service condition of licence to devote no more than 10% of all programming broadcast during the broadcast week to subcategories 6(a) Professional sports and 6(b) Amateur sports. The licence amendment herein approved permits the licensee to meet the 10% limitation, as measured during the broadcast year.*

*The Commission **approves** the further licence amendment requested by the CBC for removal of the reference to Country Music Television from its nature of service condition of licence.*

Background

1. The Commission originally authorized the operation of the national Category 1 specialty programming undertaking known as Country Canada (formerly known as Land and Sea) in *Land and Sea – a new specialty channel*, Decision CRTC 2000-453, 14 December 2000 (Decision 2000-453). The undertaking was to be operated by a company to be incorporated, in which Corus Entertainment Inc. (Corus) would hold a 70% voting interest, and the Canadian Broadcasting Corporation (CBC) would hold the remaining 30%. At the time, Corus held a majority ownership interest in the specialty service known as Country Music Television (CMT), and it continues to hold an indirect 90% voting interest in the licensee of that service.
2. In Decision 2000-453, the Commission imposed the following restrictions, among others, as part of the condition of licence prescribing the nature of service that the undertaking was to offer:

- No more than 10% of all programming broadcast during each broadcast week shall be devoted to subcategories 6a and 6b.¹
 - No more than 10% of all programming broadcast during each broadcast month shall also be broadcast on either the CBC or the specialty service Country Music Television during the same broadcast month.
3. In *Transfer of effective control of 3899071 Canada Inc.*, Broadcasting Decision CRTC 2002-336, 24 October 2002, the Commission approved an application to transfer effective control of the licensee of Country Canada through the transfer of the 70% voting interest held by Corus to the CBC. Subsequently, in *Acquisition of assets*, Broadcasting Decision CRTC 2003-172, 5 June 2003, the Commission approved an application by the CBC to acquire the assets of the specialty service from its wholly-owned subsidiary, and for a broadcasting licence to continue the operation of Country Canada.

The application

4. The Commission received an application by the CBC to amend the licence for Country Canada. Specifically, the CBC requested that the above requirement for a weekly calculation of the amount of sports programming be replaced by language that would permit the amount to be calculated over the broadcast year, i.e.:
- No more than 10% of all programming broadcast during each broadcast year shall be drawn from subcategories 6(a) and 6(b).
5. The CBC indicated that approval of the proposed amendment would provide Country Canada with the flexibility it requires to schedule event-based sports programs more effectively, and to increase the attractiveness of its service to subscribers. It noted that the amendment would not result in any increase in the overall amount of sports programming that it is permitted to broadcast within any broadcast year.
6. The CBC requested that its nature of service condition of licence be further amended to remove the reference to CMT. It noted that the reference to that Corus-owned service had relevance at the time that the original nature of service condition of licence decision was formulated, as Corus then held a 70% ownership interest in Country Canada. The CBC stated that, because it now wholly owns Country Canada's licence, the reference to CMT in the nature of service condition of licence is no longer relevant or necessary.

¹ Subcategory 6(a) consists of professional sports programming, while subcategory 6(b) consists of amateur sports.

Interventions

7. The Commission received opposing interventions from CTV Specialty Television Inc. (CTV) and Rogers Media Inc. (Rogers). CTV owns The Sports Network Inc., the licensee of the national specialty service known as The Sports Network, while Rogers owns Rogers SportsNet Inc., the licensee of the national specialty service known as SportsNet.
8. CTV submitted that Country Canada was seeking to make sports a substantial, and potentially dominant, component of the service's program schedule. CTV argued that approval of this application would allow Country Canada, at the CBC's sole discretion, to broadcast over 655 hours of sports programming annually, and to schedule this programming at any time during the broadcast year. In CTV's view, the existing limitation on Country Canada's ability to broadcast sports programming (no more than 10% in each broadcast week) ensures that the service does not become competitive with sports specialty services, and that it offers a balanced schedule of information, interaction and entertainment programming. The removal of the weekly limit would, according to CTV, enable the CBC to compete with sports specialty services.
9. CTV also argued that, because the CBC has the ability to buy rights to properties and schedule them within both the main CBC network service and the Country Canada service, this application could not be viewed in isolation. CTV stated that it had serious concerns that Country Canada could become a very strategic additional "window" for the broadcast by the CBC of sports programming that has historically been exhibited on services that have sports as their primary programming mandate. According to CTV, approval of the application would introduce a new competitor to the arena of sports programming rights.
10. Rogers submitted that a change to a measurement period of a full broadcast year would provide Country Canada with a significant degree of flexibility to schedule sports events and sports programming, especially tournaments or championships. In Rogers' view, this was precisely what the Commission sought to preclude when it imposed a weekly limitation on sports programming on Country Canada.
11. Rogers noted that the CBC focused almost exclusively on the scheduling of sports programming in its application without providing any explanation as to how and why the sports programming on Country Canada would be consistent with its nature of service. Further, Rogers stated that any change in sports programming would be inconsistent with Country Canada's mandate to provide distinctive, rural-focused programming.
12. Rogers, like CTV, expressed concern about the potential impact of the CBC's application on the rights market for sports programming. Although Rogers recognized that approval of the application would not increase the amount of sports programming on Country Canada, it maintained that this amendment would have an impact on analog sports specialty services, as it would allow Country Canada to focus on a number of live sports properties, and operate as a quasi-sports service on behalf of the CBC. Rogers stated that

the CBC is currently a very competitive bidder for broadcast rights to sports properties in Canada, such as NHL and CFL games, curling bonspiels and the Olympics, and that private broadcasters do not have the resources necessary to outbid the CBC for those rights.

Licensee's replies

13. In replying to the interveners, the CBC submitted that their concern that the amendment would allow Country Canada to transform itself into a sports specialty service was without merit. The CBC noted that the 10% limit on sports programming set by condition of licence ensures that, of Country Canada's 6,570 total hours of annual programming, almost 6,000 hours is, and would continue to be, allocated to programming other than sports. Thus, in the CBC's view, sports programming is not and could not become a dominant part of Country Canada's schedule. The CBC further submitted that no evidence had been presented by the interveners to support their claim that the additional flexibility to be afforded under the proposed amendment would result in increased competition and costs for rights to sports programming. It stated that such claims were illogical given the limited amount of sports programming that Country Canada is permitted to broadcast.
14. In responding to a written question put to it by the Commission during the deficiency process, the CBC stated that a limit on the amount of category 6a programming that Country Canada may broadcast was neither necessary nor appropriate, particularly in light of the ratio of amateur to professional sports programming historically broadcast on Country Canada. According to the CBC, over the period following the CBC's acquisition of ownership and control of Country Canada in 2002, amateur sports programming has accounted for an average of 97% of total sports programming aired by the service. Asked by the Commission whether a monthly 10% limit on the amount of sports programming broadcast by the service would be appropriate, the CBC responded that a monthly calculation would not leave adequate room in the schedule to accommodate coverage of overlapping sports events that may occur within the same month and, on occasion, within the same week. The CBC specifically cited March 2006 as an upcoming example, when the World Figure Skating Championships, the Brier, the Commonwealth Games, the Scott Tournament of Hearts, the Winter Paralympics and the Women's Curling World Championship will all take place. It noted that many of these events, the curling events in particular, were very popular with subscribers residing in rural areas. The CBC reiterated that the purpose of its application was to obtain for Country Canada a measure of additional flexibility that would allow it to better serve its viewers. It stressed that it was requesting no change to Country Canada's nature of service or in the quantum of overall sports programming that Country Canada is permitted to broadcast.

Commission's analysis and determinations

15. Country Canada's current nature of service condition of licence set out in Decision 2000-453 specifies that the licensee shall:

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

16. The Commission emphasized elsewhere in Decision 2000-453 the role that the service would play in providing “rural Canadians with distinctive programming focused on the rural experience” through its offering, consisting primarily of “information programming, including news and information, public forums, and documentaries.” The Commission authorized the licensee to provide a broad range of programming, including programming from all of the drama and comedy subcategories, variety programming, general entertainment and human interest programming, together with a limited amount of sports programming, on the basis that none of these various categories of programming were inconsistent with its mandate as a general, albeit rural-based, programming service.
17. As noted by both the applicant and the interveners, approval of the CBC’s request for permission to calculate, on an annual basis, the amount of its schedule that is devoted to sports programming would not result in any increase in the overall amount of sports programming beyond the current limit of 10%. With respect to the concern of the two interveners that approval of the application would increase the CBC’s clout as a bidder in the sports programming rights market, and that this, in turn, would increase the costs of obtaining such rights, the fact is that Country Canada’s sports programming consists almost exclusively of amateur sports coverage. Because of this, and given that the service has a relatively small subscriber base, the Commission considers it unlikely that approval of the proposed amendment would see Country Canada emerge as a significant new window for professional or other high-end sports programming. Rather, the increased flexibility might serve to raise the profile of amateur sports of interest to rural subscribers.
18. Approval would, however, allow Country Canada to schedule a far greater amount of sports programming within a condensed period than would be permitted if measurement were to remain a weekly calculation, or even become a monthly calculation. In one scenario noted by the interveners, the requested amendment could result in a schedule devoted almost entirely to sports coverage in a given week or month. This, they claimed, would fundamentally alter Country Canada’s nature of service.
19. In examining this question, the Commission has considered the licensee’s argument that even a monthly measurement period would leave insufficient room in the schedule for it to provide adequate coverage of overlapping sporting events, particularly those that appeal strongly to rural audiences. In the Commission’s view, granting Country Canada the flexibility of an annual measurement period would help the licensee to increase the attractiveness of its service among subscribers, and thereby improve its economic prospects. The Commission notes in this regard that the service experienced a financial loss in 2004 (before interest and taxes).

20. Further, the Commission considers that any incentive the CBC might have to devote entire weeks or a full month to sports programming would be weakened by the fact that this would substantially reduce or eliminate the amount of sports programming that the service could broadcast during the remainder of the broadcast year. In the Commission's view, by scheduling its programming in such a wholly unbalanced manner, the CBC would run the risk of alienating viewers whose motivation for subscribing to Country Canada has been the varied and balanced rural-based programming that it offers.
21. For these reasons, the Commission is satisfied that the increased flexibility requested by the licensee with respect to the scheduling of its sports programming should be granted. The Commission, accordingly, **approves** the application by the Canadian Broadcasting Corporation for an amendment to its nature of service condition of licence by replacing the current restriction on the amount of sports programming with the following:
- No more than 10% of all programming broadcast during each broadcast year shall be drawn from subcategories 6a and 6b.
22. The Commission notes that, in its application, the CBC stated that approval of its request would enable Country Canada to schedule live distribution of Canadian amateur sports events at times that are convenient and attractive to its viewers. The Commission thus expects the licensee to use the additional scheduling flexibility to further this purpose.
23. Given that Corus, the majority shareholder in CMT, no longer holds any ownership interest in Country Canada, the Commission **approves** the further request for an amendment to the restriction contained in the nature of service condition of licence for Country Canada regarding the broadcast of programming on both Country Canada and other services. Specifically, the Commission removes the reference contained in that condition of licence to CMT, so that the restriction now reads as follows:
- No more than 10% of all programming broadcast during each broadcast month shall also be broadcast on the CBC during the same broadcast month.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>