

1 May 2003

Ms Diane Rhéaume
Secretary-General
Canadian Radio-television &
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume:

Re: Application 2002-0897-7 for the renewal of Outdoor Life Network

Please consider this letter as an intervention opposing the proposal of Outdoor Life Network (OLN) to amend its licence to add program categories 6(a) Professional Sports, and 7 (Drama), each to a maximum level of 15% of the broadcast year, to the list of program categories the service is authorized to provide its subscribers. We do support renewal of the OLN licence, but subject to terms and conditions that ensure the nature of the service as licensed in 1996 by the Commission, is maintained.

Our reasons for opposing the addition of professional sport and drama are described below.

Background: Outdoor Life's Original Commitments and Conditions of Licence

In its January 1996 application to create the service that is now known as Outdoor Life Network, the applicant promised that the service would be unique, focusing "exclusively on outdoor, wilderness-related activities which are not generally covered by other Canadian programming services." The program grid provided with the application covered everything from birding to whale watching, to kayaking, to flyfishing to windsurfing. It did not include soccer or any conventional team sports, nor did it include as the applicant made clear in its application (page 44) "any 'stick and ball' or team sports".

At the licensing hearing this was confirmed by the applicant, which responded to Commission questions regarding potential programming overlaps with TSN and with provision of coverage of competitive events. In response to the question "Would there be some overlap between your service and TSN, for example?" the applicant replied:

"Our primary focus is in individual activities and loosely defined amateur outdoor activities. I currently cannot foresee any overlap."

In Decision 96-606 licensing the service CRTC described the service as one that “will deal exclusively with outdoor recreation, conservation, wilderness and adventure”, with a schedule revolving around eight key themes. Professional sports was not authorized for this service.

Seven years later, the applicant now seeks authority to leave the wilderness and move into the more heavily populated suburbs, with mainstream programming with broad appeal to a significantly larger demographic than the service, under its current terms and licence conditions, which establish its niche, can be expected to appeal to.

At the same time as the Commission licenced Outdoor Life to provide its unique service it also elected to licence additional services to provide diversity in the area of sports programming. Both Rogers Sportsnet and the service now known as The Score were licenced to provide a range of general amateur and professional sports coverage. And most recently, CRTC approved a series of niche category 2 sports services. With all these licensed services available to provide Canadian sports audiences with programming covering the full range of amateur and professional sports, we see no reason why Outdoor Life should be authorized to move into this genre of programming as well.

We therefore oppose the addition of drama and professional sports for the following reasons:

1. The service will be fundamentally altered

Fifteen percent (15%) of a 24-hour specialty service's schedule is 25 hours of programming. 30% -- which is the amount of new programming that could be offered were CRTC to approve the requests to add both drama and professional sports to the limits proposed by the applicant, represents 50 hours of programming per week. This is almost twice as much programming as is needed to fill peak hours – from 7 to 11 p.m. – all 7 days of the week.

The addition of two new genres of programming filling up to 30% of the schedule is substantial and significant. There is no question in our mind that this will fundamentally alter and de-nature the niche service reflecting outdoor life activities, which the CRTC elected to licence in 1996.

In its 1996 licensing decisions authorizing an array of new specialty programming services, the Commission undertook to ensure that each of the newly licensed services would be tightly circumscribed by conditions of licence which established the niche the service would be expected to serve. This secured for each of these services the benefit that no other licensee would encroach on their territory, giving them a much greater opportunity to succeed and draw subscribers than would be the case were they forced to compete head to head with other services that were relatively, or significantly similar.

In fact, were these proposed amendments to be approved, Outdoor Life could theoretically air feature films, or live professional sporting events, 7 days a week in prime time, year round and be in compliance with the proposed condition of licence.

2. Outdoor Life will become a second sports outlet for TSN

We are concerned that CTV, which controls Outdoor Life, and which also owns and controls TSN, along with significant sports rights to Canadian and international professional sports events, will over time begin to use Outdoor Life as an outlet to schedule professional or amateur team sports material it cannot fit into the TSN schedule. We saw this happen back in 2000 when some World Cup of Soccer games were run on Outdoor Life for this reason, despite the fact their broadcast was clearly outside the mandate of the service.

In authorizing CTV to acquire TSN four years ago, the CRTC required CTV to divest itself of CTV Sportsnet, as a condition of the acquisition. The Commission did so on the basis that the two sports services, and the sports rights held by CTV/TSN and its sports partner, ESPN, were significant and could have an impact on the ability of other Canadian television services – both over the air and specialty -- to secure the rights to both amateur and professional sports in Canada.

In response to deficiency questions of the Commission Outdoor Life states “approximately 10% of the OLN category 6 programming would be shared with TSN and/or WTSN.” And while it argues that it is prepared to accept a 10% limitation on the amount of amateur sports that would be shared by the various CTV owned services, it argues that no limitation should be placed on professional sports properties.

“In our view, a blanket prohibition that no programs classified as category 6a shall be shared between TSN and OLN would be detrimental to Canadian viewers and would deprive OLN of the opportunity to build its audience and advertiser base in a manner that is entirely consistent with its nature of service.”

We believe that the addition of professional “outdoor themed sports programming” which Outdoor Life has asked to add may in fact turn out to encompass much more than professional rodeo riding, equestrian events and similar programs that Outdoor Life cites in its application as events it would propose to cover if authorized to offer category 6a professional sports.

Obvious broader appeal outdoor sports that come to mind that would certainly fit the “outdoor themed sports programming definition” include professional soccer, rigger, cricket, football and even baseball, all of which could become part of OLN’s shared menu with TSN.

Conclusion

For all these reasons we believe that the amendments proposed by the applicant should be rejected because they fail to respond to the nature of the service that Outdoor Life was authorized by the Commission to provide. Denial of the proposed amendments will ensure that Canadian audiences that value and seek this genre of programming continue to receive it from the service CRTC licensed 7 years ago to provide it to them.

The Corporation wishes to appear at the public hearing in support of its intervention.

All of which is respectfully submitted.

Lanny Morry
Director, Regulatory Affairs

cc:
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