

27 July 2006

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

**Re: Broadcasting Public Notice CRTC 2006-79 - Item 1
Application No. 2006-06942-9, The Sports Network Inc.**

Dear Ms. Rhéaume:

1. In accordance with the procedures established by the above referenced Public Notice, CBC/Radio-Canada is providing the following comments on the application by The Sports Network Inc. to amend the licence of its national English-language specialty programming service known as The Sports Network (TSN).
2. In Broadcasting Decision CRTC 2006-197, the Commission ruled that The Sports Network Inc. breached its conditions of licence when it broadcast NHL hockey games on TSN using two national feeds that were distributed simultaneously by broadcast distribution undertakings (BDUs). In its application dated 2 June 2006, The Sports Network Inc. is now requesting authority to deliver two simultaneous multiple signals that offer different programming to BDUs on a digital basis.

The licensee proposes to add the following to condition 1(d) of its licence:

The licensee may also distribute such multiple feeds of its service in a single region on a digital-only basis.

3. As a preliminary matter, based on the record of the proceeding, there exists ambiguity in respect of TSN's application. For example, the application is unclear with respect to the following matters:

- The maximum number of feeds the applicant would be permitted to deliver to BDUs at any one time;
- How the 10% quarterly program schedule condition of licence would be calculated;
- How additional national feeds can be consistent with TSN's condition of licence requirement that any additional feed consist solely of regional programming;
- What is meant by a "single region" as referenced in the proposed condition of licence;
- The type of programming the applicant proposes to multiplex; and
- The basis on which the licensee proposes to sell advertising in the event of multiplexed feeds.

4. CBC/Radio-Canada is concerned that, as a result of this lack of clarity, the impact of TSN's application on the Canadian broadcasting system cannot fully be assessed. In the circumstances, the Commission would appear to require additional information before considering TSN's application and any related policy issues in respect of permitting specialty services to multiplex their service.

5. In this regard, procedural fairness and the rules of natural justice require that the Commission permit parties the opportunity to provide

comment on any new information that is subsequently provided on the record of this proceeding by the applicant. Accordingly, CBC/Radio-Canada reserves the right to provide additional comments in this proceeding, in the event TSN uses the reply stage of this proceeding to introduce new information.

6. CBC/Radio-Canada **opposes** the application by TSN to broadcast simultaneous feed(s) in a single region on three grounds:

- No policy objectives would be served by approving TSN's application for additional distribution windows for programming;
- Approval would provide an inappropriate advantage to the Bell Globemedia Inc. (BGM) family of companies in the area of sports broadcasting; and
- Approval would inflate the cost of broadcasting rights for such sporting events.

7. Each of these grounds is discussed below.

No policy objectives would be served

8. TSN attempts to rationalize its proposed amendment on the grounds of increased choice and program diversity:

The proposed amendment would allow Canadian viewers access to sports programming that would not otherwise be available in Canada and avoid the possibility of viewers seeking illegitimate grey or black market meets to access this programming. Moreover, this application, if approved, would allow viewers to continue to enjoy the programming diversity they have come to expect in the digital distribution environment and encourage the transition to digital distribution. (page 2 of the application)

9. In CBC/Radio-Canada's submission, the reasons cited by TSN do not justify approval to multiplex its service on a digital basis.

10. TSN is currently permitted to provide regional programming in place of its national feed. Pursuant to Decision CRTC 96-75, *Transfer of control of TSN, RDS, and the Discovery Channel, and the transfer of the partnership interest of one of the partners in Viewer's Choice Canada*, the Commission made it clear that this authority was originally intended for **limited and exceptional circumstances**, namely as a result of blackout restrictions imposed by professional leagues with respect to live sporting events. It permitted TSN subscribers in the relevant geographic area subject to a blackout restriction, who have paid to view the specialty programming service, to receive substituted programming. It was neither intended as an additional programming platform for sports nor to provide increased choice and program diversity.
11. The following year, TSN was permitted by condition of licence to provide a limited amount of regional programming on a separate feed in place of its national service in Decision CRTC 97-290. The Commission limited the amount of such programming to 10% of the quarterly program schedule to ensure that there would be no significant impact on “the advertising revenues of existing services” and no increased “fragmentation of the television audience”.
12. It is difficult to understand how TSN can argue that without approval to multiplex its service, that certain sports programming would not otherwise be available to Canadians. The BGM family of companies already has an unmatched number and variety of platforms for delivering sports programming to Canadians. Ultimate control of TSN rests with BGM that, through CTV Inc., has a direct or indirect interest

in nine sports specialty services and 8 other specialty services¹. BGM also owns, indirectly, 100 percent of CTV Television Inc., which, in turn, operates 21 conventional television stations across Canada, as well as holding a 40% ownership interest in TQS Inc.

13. BGM plans to further increase its programming platforms. On July 12, 2006 BGM and CHUM announced that, pending regulatory approval, BGM will acquire CHUM's radio, conventional television and specialty television assets. This will provide BGM with up to 12 additional local TV stations and 21 specialty services on which to distribute programming.

14. TSN has not provided any compelling reasons to further expand the limited authority first granted as a result of blackout restrictions of live sporting events. The Commission has acknowledged in Broadcasting Decision CRTC 2006-197 at paragraph 22 "... that it may be appropriate in certain circumstances to permit the multiplexing of specialty services". All broadcasters, including TSN, have many choices. Broadcasters decide whether to acquire the broadcast rights for a program series, MOW or live event sports. Broadcasters also make programming decisions on whether or not to preempt regularly scheduled programming. Sometimes, for example, they may enter into arrangements with affiliated companies or other broadcasters to sub-licence the rights to certain sporting events. None of these circumstances warrant the multiplexing of specialty services to broadcast live event sports programming.

¹ The nine specialty services are: Raptors TV, Leafs TV, ESPN Classic Canada, TSN, WTSN, The NHL Network, RDS, RDS Info Sports, Le Réseau Grand Air. The Outdoor Life Network is permitted to broadcast sports programs.

15. Approval of the current application would permit TSN to broadcast over 218 hours of additional programming each quarter of the broadcast year, at the applicant's sole discretion² (i.e. for up to 10% of its quarterly program schedule). Put another way, **this would permit TSN to multiplex 2.4 hours of programming a day, or one live event a day.**
16. TSN has not demonstrated any circumstances unique to its sports specialty service to justify this unfettered authority. Rather, approval would undermine the viability of other non-affiliated conventional and specialty services that carry sports programming and remove their ability to contribute to the Canadian broadcasting system.

Inappropriate Advantage to BGM or its Subsidiaries

17. The Commission has previously recognized that granting BGM or its subsidiaries additional platforms for live events sports programs would confer upon it an undue competitive advantage. In Broadcasting Decision 2006-34, the Commission denied an application by TSN to amend the broadcasting licence for ESPN Classic Canada in order to allow the programming of live sports. The licensee proposed to broadcast up to 10% of the broadcast year to live sports programming.
18. In its reasons for denying the application, the Commission stated the following at paragraph 26:

The Commission also notes several interveners' concerns about undue competitive disadvantage. In this regard, the Commission notes the statements set out in Public Notice 2000-6 about concentration of media ownership and its impact on programming diversity and fair competition that apply to services offering live

² As addressed in the previous section, the application and proposed condition of licence are vague and therefore the hours of additional programming may be even greater.

sports. Given the other holdings of the licensee and its parent company Bell Globemedia Inc., the Commission is of the view that approval of the proposed amendments would substantially increase the ability of Bell Globemedia Inc. and its subsidiaries to acquire the rights to live sports coverage.

19. The precedent established by the Commission in Decision 2006-34 recognized the BGM family of companies' dominance in sports broadcasting and concerns about programming diversity and fair competition for live events sports. Similarly, approval of TSN's proposed licence amendment for authority to multiplex its service would further enhance the ability of the BGM companies to obtain broadcasting rights for even more live sporting events to the detriment of the broadcasting system.
20. In CBC/Radio-Canada's submission, it would not be in the public interest for the Commission to further strengthen the BGM's family's already dominant position in the area of sports broadcasting and permit TSN to broadcast additional live sports programming over the course of the broadcast year.

Inflating the Cost of Rights

21. Finally, if TSN were granted the right to air additional live sports events, this would increase the demand for the rights to such events and, consequently, increase the cost of those rights. In CBC/Radio-Canada's submission, it cannot be in the public interest to establish an environment that could effectively preclude any general interest broadcaster or any sports-themed specialty service from carrying any major sports events to Canadians.

Conclusion

22. In summary, the application by TSN to multiplex programming on The Sports Network should be denied. Approval of the licence amendment would undermine the viability of conventional and specialty services and remove their ability to contribute to the Canadian broadcasting system. It would further enhance the already dominant position of the BGM family of companies in sports broadcasting and drive up the cost of rights for sports events. This would have a direct, negative effect on other broadcasters, including CBC/Radio-Canada. As the Commission has previously recognized in Decision 2000-86 and Decision 2006-34, this would not be in the public interest.

All of which is respectfully submitted.



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