

3 June 2005

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

**Re: Broadcasting Public Notice CRTC 2005-40 - Item 2, Application by TSN to amend its licence to add category 7 drama and comedy programming and to participate in the English-language Canadian television drama incentives program**

Dear Ms. Rhéaume:

**Introduction**

1. The Canadian Broadcasting Corporation/Radio-Canada (“CBC/Radio-Canada”) is pleased to provide the following comments in response to the application by The Sports Network Inc. (TSN) to amend its conditions of licence relating to its nature of service to permit it to broadcast sports-related category 7 drama programming and to amend its licence to participate in the English-language Canadian television drama incentives program as described in Broadcasting Public Notice CRTC 2004-93.
2. CBC/Radio-Canada opposes this application.

**TSN is a Niche Service**

3. TSN is licensed as a specialty TV service. It operates within a particular program niche and is therefore distinct from general interest conventional television services. TSN is seeking programming flexibility that would permit it to broaden its focus and move it away from its role as a niche service. The proposed amendment to TSN’s nature of service condition of licence, if approved, would permit TSN to offer a broad range of programming similar to that aired by conventional television stations.

## **No Competitive Rationale**

4. TSN's application is based principally on the idea of competitive parity. The applicant refers to the ability to air drama by such sports-based services as SportsNet, WTSN, ESPN Classic Sports and The NHL Network and suggests that TSN needs the same ability. Further, TSN suggests that unless this application is approved it will be "at a disadvantage vis-à-vis other sports services."
5. The suggestion that TSN could be at a competitive disadvantage if this application is not approved is misleading and needs to be addressed.
6. The specialty services TSN refers to in its application are not directly competitive with TSN. The conditions of licence imposed by the CRTC on these specialty television services operating in the sports genre ensure that each service offers programming that is complementary to, rather than directly competitive with the other services.
7. For example, SportsNet is a regionally based service that serves the special interest of Canada's regions on four distinct feeds. It is not a national service like TSN. Further, the only drama SportsNet is permitted to air is limited to non-dramatic feature length films about sports and sports personalities. ESPN Sports Classic, a category 2 diginet, is only permitted to air category 7d) drama – theatrical feature films aired on TV. WTSN is a category 1 digital specialty service that can only air category 7c) specials, mini-series, made-for-TV feature films and 7d) theatrical feature films aired on TV. The NHL Network, a category 2 diginet, is permitted to air programming from all of the drama program categories but its service is focused exclusively on all aspects of the game of hockey, which makes it considerably different than the more broadly-based sports service TSN provides.
8. Therefore, while some sports-based specialty services have the ability to air drama this is limited either by the very narrow focus of the service or by the select number of sub-categories they can draw upon within category 7.
9. Finally, TSN has submitted no evidence in this proceeding that the ability of these smaller sports-based services to draw, in narrow ways, on the drama category has placed it at any competitive disadvantage.

## **No Policy Rationale**

10. TSN provides no public policy rationale for approval of this application other than:

*The addition of category 7 will enable TSN to acquire Canadian and non-Canada dramas and will allow the network to potentially play a role in supporting the creation of original Canadian sports-themed drama, consistent with the Commission's objective to increase the viewing of*

*Canadian drama on Canadian English-language services as set out in PN 2004-93.*

11. However, in its response to CRTC's deficiency questions dated 25 February, 2005, TSN indicates that it is not prepared to accept a condition of licence that mandates the broadcast of only Canadian drama or a significant proportion of Canadian drama within the 15% weekly limit proposed.
12. In the CRTC's introductory comments renewing the licences of 22 specialty services in 2004 (Broadcasting Public Notice CRTC 2004-2), the CRTC stated:

*In those cases where a licensee has proposed to introduce a drama component to its programming service for the first time, the Commission has required that the additional component be in keeping with the licensee's nature of service, **and that it be exclusively in support of Canadian drama programming.** (emphasis added)*
13. TSN's proposal to add a drama component to its nature of service does not address the CRTC's policy priority to encourage and support the creation of Canadian drama.
14. TSN's request to amend its licence to take advantage of the CRTC's drama incentives program, as set out in Broadcasting Public Notice CRTC 2004-93, is tied to approval of its application to add category 7 programming to its nature of service condition of licence. If there is no commitment to undertake Canadian drama there is no policy rationale to approve this application and therefore no need to also approve the request for the authority to participate in the drama incentives program.
15. CBC/Radio-Canada appreciates this opportunity to provide its comments to the Commission in response to this application.

Yours truly,



Bev Kirshenblatt  
Senior Director, Regulatory Affairs

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cc: Phil King, TSN

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