



20 November 2014

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

Re: *Application 2014-0793-2, Broadcasting Notices of Consultation 2014-541 and 2014-541-1 (Ottawa, 21 October 2014 and 27 October 2014)*

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system and regulation that serves the public interest.
- 2 FRPC is pleased to participate in the process initiated by Broadcasting Notice of Consultation 2014-541, to address the application for a network licence submitted by Rogers Sports Inc. (RSI), the licensee of the Category C specialty service known as Sportsnet. The Forum opposes RSI's application as it is current set out, on the grounds of insufficient evidence: RSI has presented too little information to enable the CRTC to know what it would be licensing, and the information that RSI has presented does not establish that its network licence will serve the public interest by achieving Parliament's objects for the broadcasting system, or by improving or strengthening that system.
- 3 The Forum wishes to be considered as an intervener in this proceeding, and respectfully requests the opportunity to appear at the hearing scheduled for 8 January 2015 to set out its views in greater detail and to respond to the applicant. Our contact information is provided at the end of our intervention.
- 1 The application by Rogers Sports Inc.**
- 4 This section sets out the facts and arguments being made by RSI in support of the application that is asking the CRTC to approve.

A Facts provided by RSI

- 5 RSI is seeking a four-year network licence¹ for its Category C specialty programming service, Sportsnet, with respect to its “arrangement with the Canadian Broadcasting Corporation (CBC) for the broadcast of the program *Hockey Night in Canada* on the CBC.”²
- 6 RSI has not provided the hours of operation for its network.³
- 7 Sportsnet says that in addition to HNIC, it will broadcast *Hockey 101*, a new program offered in 22 languages which is “designed to help new Canadians understand the basics of hockey including the rules of the game.” Sportsnet will begin by offering *Hockey 101* in six non-official languages,⁴ with subsequent broadcasts in fourteen other non-official languages later in the season.
- 8 While the network’s programs will be broadcast in English⁵ on CBC stations, the OMNI stations licensed to Rogers Broadcasting Limited will apparently use a “separate production team and broadcast talent to call the play” in Punjabi.⁶
- 9 RSI “will produce and sell commercial inventory” for HNIC when it is broadcast on the CBC’s English-language conventional television stations.⁷ RSI submitted estimates of the revenues and expenditures from 2014-15 to 2020-21 to the CRTC,⁸ but has requested confidentiality for all of this information, on the grounds that disclosure of this information would prejudice Rogers “competitive position”. While RSI provided an abridged version for the public to review,⁹ it contains no financial information.¹⁰

¹ Susan Wheeler, Vice-President, Regulatory, Media, Rogers Media, *Re: Application by Rogers Sportsnet Inc. for a new television network licence pursuant to Broadcasting Decision CRTC 2014-399 – Application 2014-0793-2*, (7 October 2014) at 1 [RSI’s reply to deficiency questions].

² Rogers Sportsnet Inc., *Application for a Permanent Network Licence for the specialty Category C service Sportsnet pursuant to Rogers Media Inc., Group-based Licence Renewals, Broadcasting Decision CRTC 2014-399 (Decision 2014-399)*, Appl. 2014-0793-2 (Toronto, 15 August 2014) [RSI’s application], at ¶1.

³ RSI states that question 7.3 of the application form, which asks for the “total number of hours per week (on-air) of proposed program service for Year 1 of the proposed licence term” is “not applicable as this is an application for a network licence, not a television programming undertaking.”

⁴ Cantonese, Italian, Mandarin, Punjabi, Portuguese and Tagalog; Rogers’ reply to deficiency questions, *supra* note 1 at 3.

⁵ S. 7.1 – “The principal language of programming will be : English”.

⁶ RSI’s reply to deficiency questions, *supra* note 1 at 2.

⁷ *Ibid.*

⁸ RSI’s application, *supra* note 2, Appendix 4, “ABRIDGED Financial Operations”.

⁹ *Ibid.*, Cover letter , at ¶15:

In accordance with past Commission practice and Rules of Practice and Procedure, Rogers requests confidential treatment for Rogers’ projected financial information in Appendix 4. Rogers notes that the Commission granted

According to a CRTC deficiency question, RSI has allocated 100% of its expenditures for the network to the “programming” category.¹¹ While it said that it would file its method for allocating non-programming expenditures related to its network, by platform, by the end of October 2014,¹² we were unable to locate this information on the CRTC’s website as of today’s date.

- 10 RSI has disclosed that the industry fees required by the *Broadcasting Licence Fee Regulations, 1997* amount to \$1.6 million in the network’s first year.
- 11 RSI’s application provides no information on the level of Canadian content, the hours of priority programming or the level of local reflection that its network will broadcast, “as this is an application for a network licence, not a television programming undertaking.”¹³ For the same reason RSI has not provided any information about marketing,¹⁴ technical aspects of the application,¹⁵ its Canadian programming,¹⁶ its priority Canadian programs, or its employment equity practices.¹⁷

B Arguments made by RSI

- 12 The cover letter for RSI’s application explains that the application is being made in accordance with a condition of licence for Sportsnet set out in *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2014-399 (Ottawa, 31 July 2014). The Sportsnet licence expires 31 August 2016.¹⁸
- 13 RSI argues that the Sportsnet network should not be required to pay licence fees because Rogers did not include this expense “when determining its budgets and programming plans for the upcoming NHL season”.¹⁹ It says that if Sportsnet is not

confidentiality to this information when it was filed as an undertaking in our licence renewal hearing and requests that it continue to be treated as confidential. This information is not routinely disclosed in the course of business and given that it relates exclusively to a particular program, its disclosure would be prejudicial to Rogers’ competitive position.

¹⁰ Being Appendix 4 of the RSI’s application, *supra* note 2 (with and without the Part I and Part II licence fees).

¹¹ RSI’s reply to deficiency questions, *supra* note 1, at 3.

¹² *Ibid.*, at 4.

¹³ RSI’s application, *supra* note 2, at 20-21, ss. 7.4 (“Canadian content commitment”), 7.5 (“Priority programming”) and 7.6 (“Local reflection”).

¹⁴ S. 5.

¹⁵ S. 6.

¹⁶ S. 7.14.

¹⁷ S. 8.

¹⁸ Broadcasting Decision CRTC 2014-399, Appendix 10, “Terms”.

¹⁹ RSI’s reply to deficiency questions, *supra* note 1 at 3.

exempted from the *Licence Fee Regulations*, it will “certainly have to revisit some of our programming decisions which would impact both current and future plans.”²⁰

- 14 RSI also says that two conditions of licence proposed by the CRTC for the RSI network licence are redundant, as they have already been attached to the licence for RSI.²¹

II English-language television networks in Canada

- 15 Networks – arrangements in which a licensed radio or television undertaking broadcasts programming provided and controlled by another party – have existed since broadcasting began in Canada.²² When the Board of Broadcast Governors replaced the CBC as Canada’s broadcast regulatory authority in 1958, the *Broadcasting Act* gave it the authority to allow Canadian-owned networks of broadcasting stations to operate.²³

- 16 Canada’s first television network was created in 1953, when the country’s first private television station went on air as an affiliate of the CBC.²⁴ By the late 1950s private television stations were discussing the formation of a privately owned- and -controlled television network.

- 17 The BBG issued its first proposals for regulating private television networks in September 1960.²⁵ It considered networks to exist when control over one undertaking’s programming was delegated to another party,²⁶ and the agreement between the parties involved “a minimum of ten hours of reserved time per week”.²⁷

A Canada’s first private English-language network: CTV

- 18 Canada’s first private television network – CTV Television Network Limited – was licensed by the BBG in 1961 and began operations that year.²⁸ A condition of CTV’s licence required the time reserved for network programming on affiliated stations to

²⁰ *Ibid.*, at 3.

²¹ *Ibid.*, at 5.

²² Frank Foster, At 32: Department of Marine and Fisheries – regulations prohibited “a network of stations except as authorized in writing”.

²³ S. 14(1).

²⁴ CBC, *CBC Fact Book 1989*, at B-2.

²⁵ Board of Broadcast Governors, *Announcement*, (Ottawa, 9 September 1960).

²⁶ *Ibid.*

²⁷ Board of Broadcast Governors, *Annual Report 1960*, at 12.

²⁸ Board of Broadcast Governors, *Applications for Television Networks, “For Approval”* (21 April 1961); Andrew Stewart and William H.N. Hull, *Canadian Television Policy and the Board of Broadcast Governors, 1958-1968*, (University of Alberta Press: 1994, Edmonton) at 94.

“normally not be less than ten hours in any week and ... in any event not average less than ten hours over any 12-month period.”²⁹ The BBG’s Chair later explained the Board’s belief that networks would give Canadian programs a wider audience.³⁰

19 Although the BBG began to express concern about the CTV Network’s programming practices in 1966,³¹ the network’s operations were not considered in detail until 1971³² by which time the CRTC had replaced the BBG.

B Network sports

20 Sports broadcast by private undertakings triggered regulatory problems from the outset. Just a few months after CTV launched in 1961, its largest affiliate offered CBC affiliates the chance to broadcast football games.³³ CBC decided not to change its affiliation agreements to allow this – but subsequently bought the CTV affiliate’s rights to the games so that their carriage was assured.³⁴

21 Disputes over sports arose again in 1962. CFTO-TV and CTV had obtained exclusive rights to the 1962 Grey Cup game³⁵ – but CTV-only carriage meant that Canadians not reached by the CTV service would be denied access to the Grey Cup. After CBC agreed to air the game, but not its ads, the BBG intervened by enacting a regulation requiring

²⁹ Board of Broadcast Governors, *Applications for Television Networks*, (Ottawa, 21 April 1961), condition (b).

³⁰ Andrew Stewart and William H.N. Hull, *Canadian Television Policy and the Board of Broadcast Governors, 1958-1968*, (University of Alberta Press: 1994, Edmonton) at 76:

[t]he Board’s interest in the proposal lay in the opportunity it appeared to present for wider distribution of Canadian programs. Each of the new stations was well equipped with production facilities and was committed to meeting the Canadian content regulations. It seemed to the Board that programs of network quality produced at the stations could obtain a wider audience, with greater opportunity to recover costs, through arrangements for exposure on a number of stations. ...

³¹ Board of Broadcast Governors, *Announcement*, (Ottawa, 4 March 1966). The BBG approved a transfer of shares in CTV, noting its plans to review the network’s programming:

4. The Board, being concerned over the past programming practices of CTV Television Network Limited, will review the programming of the network and all other aspects of network operation in the light of the representations made at the hearing on February 23, 1966, at the first public hearing to be held by the Board after October 1, 1967; and at the same public hearing will consider any application that CTV Television Network Limited may wish to make for extension for its permission beyond June 30, 1968, and any application by other persons for permission to form and to operate a network.

³² ...
Public Announcement, (Ottawa, 28 July 1970), Decisions CRTC 70-197 and -198, renewed the CTV network licence without commentary from October 1970 to September 1973.

³³ Andrew Stewart and William H.N. Hull, *Canadian Television Policy and the Board of Broadcast Governors, 1958-1968*, (University of Alberta Press: 1994, Edmonton) at 104-106.

³⁴ *Ibid.*, at 106.

³⁵ For the price offered by CBC. *Ibid.*, at 107.

all licensees to broadcast the 1962 Grey Cup game as being “of public interest”.³⁶ When the CBC declined to obey the regulation³⁷ the federal government acted, with the result that CBC ultimately broadcast the game – without the ads.³⁸

C The law on networks

22 The *Broadcasting Act* defines broadcasting undertakings to include “a network”, and defines a network in terms of the delegation of responsibility. A network is “any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person”.³⁹

23 Parliament expressly requires privately owned networks to make significant contributes to Canadian programming. Specifically, its broadcasting policy states that

private networks should, to an extent consistent with the financial and other resources available to them,

(i) contribute significantly to the creation and presentation of Canadian programming, and

(ii) be responsive to the evolving demands of the public

24 Parliament distinguished, however, between licensed networks, and networks operating for a limited time or purpose. It requires the CRTC to hold a public hearing to consider the licensing of a network, but not a temporary network.⁴⁰

D The CRTC’s 1989 network policy

25 The CRTC’s current policy on networks was set out in 1989. The policy explains that networks are not just important for achieving Parliament’s broadcast policy objectives, but are “a primary component” of the broadcasting system.⁴¹ The CRTC’ policy says

³⁶ *Ibid.*, at 112.

³⁷ *Ibid.*, at 118.

³⁸ *Ibid.*, at 119.

³⁹ S. 2(1).

⁴⁰ S. 18(1)(a).

⁴¹ *Policy Respecting Television Networks*, Public Notice CRTC 1989-2 (Ottawa, 10 January 1989):

... Increasingly, networks and syndicated programming activities are capable of reaching, informing and entertaining Canadians with high quality, diverse programming. Consequently, the Commission regards networks as an important vehicle to achieve the goals set out for the broadcasting system in the Act. ...

...

The licensing, as networks, of major television program distribution operations that fulfill the criteria of delegation of control or produce a significant impact on the broadcasting system allows the Commission

that it views “the network licensing process as an important instrument to help strengthen [Canada’s broadcasting] system.”⁴²

E CRTC decisions about the CTV network

26 CTV is not the only network that the CRTC has licensed, but in our view is the one that most closely resembles the proposed RSI network in terms of financial impact.

27 The CRTC’s licensing decisions from the 1970s to the 1990s continuously reflect the Commission’s view that the revenues earned by CTV should be used to strengthen Canadian programming.

28 In 1971, for example, even before it had called on the network to renew its licence, the CRTC was sufficiently concerned about CTV’s contribution to the broadcasting system that it required the network

... to reorganize its corporate and programming structure in order that the Network and its member stations would be able

“a) generally to fulfill their duties and obligations,

b) to extend its services,

c) to increase their ability to produce significant Canadian programs in accordance with the objectives established by the Commission and

d) to improve the decision-making process of the Network.”⁴³

29 From 1973 to 1999 the CRTC’s decisions to renew the CTV network licence emphasized its responsibility to support the development, production and broadcast of more, and higher-quality Canadian television content. The CRTC required CTV to increase its production of and expenditures on Canadian content in 1973, 1976, 1979, 1987 and 1994 (see Appendix 1). Subsequent CRTC decisions to permit ownership

to regulate and supervise centrally-distributed programming at the level of the program source, as well as regulating the affiliated stations.

The Commission considers that this approach allows it to supervise and regulate the broadcasting system more effectively, ensuring the fair treatment of such operations and the orderly utilization of such sources of programming.

⁴² *Ibid.*:

III. CONCLUSION

The Commission regards television network licensees as a primary component of the Canadian broadcasting system and the network licensing process as an important instrument to help strengthen that system. The programming of television network licensees contributes significantly to achieving the goals set out for the Canadian broadcasting system in the Act.

⁴³ *Public Announcement*, (Ottawa, 22 January 1973), Decision CRTC 73-44, at 1.

consolidation involving CTV affiliates from the mid-1990s on also led the Commission to postpone consideration of the network licence until the early 2000s. Although at least five stations are currently said to be operating as CTV affiliates,⁴⁴ the current legal status of the CTV network is unknown.⁴⁵

- 30 The Forum respectfully submits that RSI's network application must be considered in the context of the CRTC's current network policy, as well as the circumstances of RSI as a subsidiary of Rogers Communications Inc.

III The Forum's comments on RSI's application

- 31 The Forum's central concerns about RSI's network application are that it has provided no information to enable the public to understand the network service that is being proposed, and that it has not made any commitments to strengthen Canada's broadcasting system.

A Will the RSI network strengthen Canada's broadcasting system?

- 32 The CRTC's 1989 network policy states that network licensing is "an important instrument to help strengthen" the broadcasting system", and that television network licensees' programming "contributes significantly to achieving the goals set out for the Canadian broadcasting system in the Act".⁴⁶
- 33 Rogers has told the Commission, most recently this past April, that it understands its responsibilities as a licensee:

In closing, we understand our responsibility to the Canadian broadcasting system. We respect our importance to Canadians of all ethnic backgrounds and of all languages in all regions of the country. We appeared here to put forth a fair reasonable plan in an

⁴⁴ Decision CRTC 2013-467, at ¶19 lists CKSA-DT Lloydminster and CKPR-DT Thunder Bay as affiliates of the CBC; and CITL-DT Lloydminster as an affiliate of CTV; and CHFD-DT Thunder Bay as an affiliate of Global. *CJBN-TV Kenora – Licence renewal*, Broadcasting Decision CRTC 2011-448 (Ottawa, 27 July 2011) at ¶13 lists CJBN-TV Kenora as a CTV affiliate.

⁴⁵ CRTC ownership chart 143i (<http://www.crtc.gc.ca/ownership/eng/cht143i.pdf>), for example, lists Bell Media's conventional TV undertakings and does not refer to a network licence.

Although the CRTC granted CTV Television Inc. a new network licence to provide programming to CJON-TV in *Licence to carry on a new television network*, Broadcasting Decision CRTC 2001-506 (Ottawa, 21 August 2001), <http://www.crtc.gc.ca/eng/archive/2001/DB2001-506.htm>, the CRTC subsequently stated its expectation that (following the termination of the network agreement with CJON-TV) the network would apply for the revocation of the licence: see *CJON-TV and its transmitters - Licence renewal*, Broadcasting Decision CRTC 2003-170 (Ottawa, 3 June 2003), <http://www.crtc.gc.ca/eng/archive/2003/db2003-170.htm>, at ¶19.

⁴⁶ *Policy Respecting Television Networks*, Public Notice CRTC 1989-2 (Ottawa, 10 January 1989)

ever-changing broadcast atmosphere that we think upholds our responsibilities to the Commission and the Broadcasting Act.⁴⁷

34 In fact, when Rogers Broadcasting Limited applied for new conventional ethnic television station licences to serve Calgary and Edmonton, it made programming and other commitments worth \$10,000,000, or approximately 12% of its total projected revenues for both cities.⁴⁸ Specifically, it committed to provide

- \$4 million to the production of third-language dramas and documentaries, a minimum of 10% of which would be Aboriginal programming initiatives
- \$4 million to cross-cultural programming initiatives, a minimum of 10% of which would be Aboriginal programming initiatives
- \$1 million to an official languages media educational initiative
- \$500,000 to local program pilots for under-served groups⁴⁹
- \$250,000 for the development of Ethnic New Media projects; and
- \$250,000 for the creation of a New Media Micro-site.⁵⁰

35 According to the CRTC's July 2014 decision to renew a number of Rogers' programming services, the current network licence application involves a 12-year, \$5.2 billion contract that Rogers signed with the NHL with respect to the NHL season's broadcast and multiplatform rights.⁵¹ The contract "gives Rogers all national rights to all NHL games, including playoffs, and special events such as future NHL all-star games and NHL drafts, on all platforms in the English language."⁵² Rogers has

... sub-contracted rights for "Hockey Night in Canada" games to the CBC but will retain editorial control and all advertising revenues. Rogers has also sub-

⁴⁷ CRTC, *Transcript of Proceeding*, Vol. 2 (Gatineau, 9 April 2014), at ¶3129.

⁴⁸ Rogers projected total revenues over 7 years of \$43.3 million for Calgary, and \$38.1 million for Edmonton. See Broadcasting Notice of Public Hearing CRTC 2006-13 (Ottawa, 14 December 2006), <http://www.crtc.gc.ca/eng/archive/2006/n2006-13.htm#a5>, items 5 and 6.

⁴⁹ *Ethnic television stations in Calgary and Edmonton*, Broadcasting Decision CRTC 2007-166 (Ottawa, 8 June 2007), <http://www.crtc.gc.ca/eng/archive/2007/db2007-166.htm>, at ¶12.

⁵⁰ *Ibid.*, at ¶16.

⁵¹ *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2014-399, (Ottawa, 31 July 2014), <http://www.crtc.gc.ca/eng/archive/2014/2014-399.htm>, at ¶37.

⁵² *Ibid.*

contracted all French-language multi-media rights to TVA, TVA Sports and TVA Sports 2.⁵³

36 Rogers clearly believes this deal makes excellent business sense. It will allow its related companies to broadcast different NHL games on different programming services, and the games will also be available on tablets and smartphones.⁵⁴

37 The NHL arrangement will also help Rogers to meet its Canadian programming expenditure (CPE) commitments.⁵⁵ Last April Rogers said that the new HNIC network would increase Canadian program investment and employment:

... This deal will result in millions of dollars being invested in Canadian programming and production in every region in the country, create over a [sic] 100 new incremental full-time jobs, and many more part-time and freelance jobs, in the broadcast sector due to our plans to enhance and expand coverage of the games like never before and reduce our reliance on U.S. programming. We fail to understand how these benefits are not in the public interest.⁵⁶

38 Rogers has clearly made extensive plans for maximizing revenues from the NHL rights. While first claiming this past April that the HNIC arrangement “is not new revenue to the broadcast system”,⁵⁷ Rogers also foresaw revenues beyond those once obtained by CBC:

The NHL gives us live content relevant to the consumer and to advertisers. It will provide a significant boost to City television by giving us the opportunity to reduce our reliance on US programming and giving us a promotional platform for all our programming that we have never had before.

All this will help offset the continued decline in conventional advertising.

...

And it's a win for us. CBC's distribution allows us an important additional platform to efficiently monetize the NHL rights.⁵⁸

39 Unfortunately, RSI's network application does not repeat or update this evidence. It makes no commitments to program exhibition, expenditure or employment. It does not even set out the minimum information that an application of this type requires –

⁵³ *Ibid.*, at ¶38.

⁵⁴ CRTC, *Transcript of Proceeding*, Vol. 1 (Gatineau, 8 April 2014), at ¶¶57-58.

⁵⁵ *Ibid.*, at ¶81.

⁵⁶ Susan Wheeler, Vice-President, Regulatory, Media, *Final Reply Comments*, (30 April 2014) at 3, ¶12.

⁵⁷ CRTC, *Transcript of Proceeding*, Vol. 2 (Gatineau, 9 April 2014), at ¶3063.

⁵⁸ *Ibid.*, at ¶¶3049-3050, and 3056.

namely its weekly hours of operation, the level of Canadian content it will provide, or a complete list of the undertakings likely to be its affiliates. This makes it impossible to understand the impact of the network's Canadian programming on levels of foreign content in Canada's broadcasting system.

- 40 In brief, RSI's network application offers no benefits, and does not explain how approval of its service will contribute to achieving Parliament's objectives for the broadcasting system, or how it will strengthen the system.
- 41 Meanwhile, the sale of the NHL rights to Rogers has already had a negative impact on the broadcasting system. The loss of HNIC has reduced and will continue to reduce CBC's advertising revenues: its most recent quarterly report says that \$130 million in budget cuts that it has announced, and the loss of 657 full-time or equivalent positions over two years are due in part to the "end of the NHL contract".⁵⁹ How will the RSI compensate the broadcasting system for these losses?
- 42 What benefits does the RSI network offer the broadcasting system, either on its own or to compensate for the negative impact the HNIC deal has already had? How many hours of original programming will be created – outside of the HNIC games – and broadcast by the RSI network? How many full-time staff will RSI employ? How many hours of independent program production will RSI generate?
- 43 The Forum respectfully submits that the public interest is not served when the benefits from a new network flow in one direction only – to the network licensee. We recommend that if the CRTC licenses the RSI network, it should require financial commitments worth at least 12% of the network's revenues – the same level committed by Rogers to obtain two new television station licences in Alberta.

A What programming will the RSI network offer?

- 44 In April 2014 Rogers told the CRTC that

... it will broadcast more than 1,250 hours of live games coverage during the regular season, as well as pre-game shows on Saturdays and Sundays beginning at 5 p.m. on the City television stations. In addition, it will produce features on the game's top stars and hundreds of grassroots community features to air during a program called "Hometown Hockey," to be broadcast on Sunday evenings.⁶⁰

⁵⁹ CBC, *First Quarter Financial Report 2014/2015*, at 5.

⁶⁰ *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2014-399, (Ottawa, 31 July 2014), <http://www.crtc.gc.ca/eng/archive/2014/2014-399.htm>, at ¶39.

- 45 In replying to interveners, however, Rogers said that its agreement with CBC will provide “approximately 300 hours of popular programming”.⁶¹
- 46 RSI’s application does not clearly state the level and type of programming that its network will offer. The application form completed by RSI provides no program information, and its “Block Program Schedule” does not set out a block schedule, but rather a list of “CBC-NHL Windows”.⁶² It is unclear what has become of the pre-game shows, features and grassroots community features mentioned by Rogers in April 2014 – but RSI’s response to deficiency questions refers to *Hockey 101*, a new program that will be broadcast in English, French and twenty other languages.
- 47 Will the RSI network offer affiliates *HNIC* as well as *Hometown Hockey* and *Hockey 101* and other programs? RSI’s application has too little information to permit the public to know the answer to this question.

B What undertakings would participate in the RSI network?

- 48 Decision CRTC 2014-399 required Rogers to submit network applications involving RSI, the CBC and the television services licensed to Rogers Media inc. Specifically, condition of licence 3 required the submission of

... separate applications with the Commission ... to carry on a network licence and a temporary network licence with respect to its arrangement with the Canadian Broadcasting Corporation (CBC) for the broadcast of the program “Hockey Night in Canada” on the CBC and on Rogers Media Inc.’s television undertakings.

[underlining added]

- 49 When the CRTC granted Rogers’ two applications for a temporary network licence on 3 September 2014⁶³ and 3 November 2014,⁶⁴ however, the applications referred only to the CBC. The current network application by RSI also refers to the CBC alone,⁶⁵ and therefore does not appear to comply with Sportsnet’s condition of licence.

⁶¹ Rogers’ 30 April 2014 reply at 5, ¶19.

⁶² Appendix 7A of RSI’s network application.

⁶³ John Traversy, Secretary General, CRTC, *RE: Application 2014-0791-6 – Temporary network licence for the specialty Category C service Sportsnet pursuant to Broadcast Decision CRTC 2014-399 – Approved*, (Ottawa, 3 September 2014), <http://www.crtc.gc.ca/eng/archive/2014/lb140903.htm>.

⁶⁴ John Traversy, Secretary General, CRTC, *Re: Application by Rogers Sportsnet Inc. for a temporary television network licence pursuant to Broadcasting Decision CRTC 2014-399 – Approved*, (Ottawa, 3 November 2014), <http://www.crtc.gc.ca/eng/archive/2014/lb141103.htm>.

⁶⁵ RSI’s application, *supra* note 2, Cover letter, at ¶1.

50 RSI has told the CRTC that while “the English-language version of the program HNIC will not be simultaneously broadcast in its entirety by any other television programming undertaking other than the CBC”,⁶⁶ it planned to offer *Hockey 101* in English.⁶⁷ If the CBC is not broadcasting *Hockey 101*, will this content be broadcast by any other licensee? If so, will these licensees’ undertakings become RSI network affiliates?

51 We note, for example, that in April 2014 Rogers submitted a list of the games in the potential 2014-15 schedule “for Rogers Produced Games for Group, CBC and Sportsnet”. This list refers to games on “CBC”, “SN”, “City”, and “SN 360” and “Other”.⁶⁸ Assuming this evidence was and remain correct, will these programming undertakings be affiliated with the RSI network?

52 Finally, we note that the current website schedules of CITY-DT Toronto and CBC TV appear to say that each will broadcast NHL hockey at 7 pm this Saturday, November 22nd - but that they will broadcast different games. Since RSI owns the NHL rights, does this mean that Rogers Broadcasting Limited will be an affiliate of the RSI network? If not, will RBL ever be able to carry the same HNIC programming being broadcast by the CBC?

53 Answers to the questions noted above are needed to enable the CRTC to understand how the RSI network will operate.

C Can the CRTC license services without a complete record?

54 In 1989 the CRTC published its disappointment with the CTV Network’s failure to provide certain information:

... The Commission requires the best possible advice regarding the future of the broadcasting system from those in a position to provide it. Without detailed information and opinion from the principals involved, the

Rogers Sportsnet Inc. ... is pleased to file the enclose application for a permanent network licence for the specialty Category C service Sportsnet with respect to our arrangement with the Canadian Broadcasting Corporation (CBC) for the broadcast of the program *Hockey Night in Canada* on the CBC.

⁶⁶ RSI’s reply to deficiency questions, at 2.

⁶⁷ RSI’s reply to deficiency questions, at 3.

⁶⁸ *NHL Rights Allocation-Abridged* , DM#2106804-Engagement_Undertakings-Rogers-Breakdown NHL games.pdf.

Commission's role in the development of a dynamic broadcasting system is made more difficult.⁶⁹

- 55 What is interesting is that the licensee provided substantial information about its own programming plans for the next licence term – but did not speculate about the future of the broadcasting system.
- 56 By contrast RSI’s network application provides virtually no information at all, about the service it would provide or how it would operate. In fact, the only information included in RSI’s application form consists of its name, its request for a network licence, its intention to broadcast in English, and its commitment to be 100% accessible:

Information requested by CRTC application form	Rogers’ response
1. General Information	Request for network licence
2. Ownership	Rogers Sportsnet Inc.
2.5 Funds to finance the undertaking	[no answer]
3. Industry consolidation and cross-media ownership	[no answer]
4. Financial operations	[no answer]
5. Marketing	“N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking”
6. Technical information	“N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking”
7. Programming	<p>Principal language – English</p> <p>Hours of operation – [no answer]</p> <p>Canadian content – “N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking”</p> <p>Priority programming hours from 7pm-11pm: “N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking”</p> <p>Local reflection - “N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking”</p> <p>Accessibility – Yes (100% condition of licence); description of protocols for live programming</p> <p>Described video - “N/A – This section is not applicable as this is an application for a network licence, not a television</p>

⁶⁹ CTV Television Network Limited, Decision CRTC 87-200 (Ottawa, 24 March 1987), <http://www.crtc.gc.ca/eng/archive/1987/DB87-200.HTM>.

Information requested by CRTC application form	Rogers' response
	programming undertaking”
7.8 Priority programming categories, including(b) “strategies to develop new Canadian programming and new Canadian talent”	“N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking”
7.9 Independent production	“N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking”
7.14 Program description of each Canadian production	[no answer]
8. Inclusion of designated groups	8.1 – employment equity – “N/A – This section is not applicable as this is an application for a network licence, not a television programming undertaking” 8.2 – on-air presence – [no answer] 8.3 – cultural diversity – [no answer]

57 We note from the deficiency question raised by the CRTC that RSI allocated all of its expenditures into the programming category – begging the question of who will be selling the inventory for HNIC on the CBC.

58 The lack of information in RSI’s application makes it impossible for the Commission to know and understand what it is being asked to license, or how approval of the application will serve the public interest and the objectives of Parliament’s broadcasting policy for Canada. Meanwhile, Rogers has itself criticized other applicants for the lack of information provided in their applications.⁷⁰

59 While Rogers offered some information about its hockey plans in April 2014, that information was set out as evidence for other applications. It may also have changed since Rogers began to develop its network application for RSI. Even if the CRTC could assume that the information submitted by Rogers at the April 2014 hearing has not changed, the Commission cannot know this for certain – and in any event, RSI denies this to be the case. In filing the current application RSI states that it is submitting documents “in support of our application for a permanent network licence.”⁷¹

⁷⁰ See e.g., *Terrestrial broadcasting distribution undertakings serving various communities in the Atlantic Provinces – Licence renewal and licence amendments*, Broadcasting Decision CRTC 2013-156 (Ottawa, 27 March 2013), <http://www.crtc.gc.ca/eng/archive/2013/2013-156.htm>, at ¶124.

⁷¹ RSI’s application, *supra* note 2, Cover letter, at 1, ¶14.

60 The Forum respectfully submits that approval of an application that is devoid of facts would be unreasonable, and therefore outside the CRTC's jurisdiction.⁷²

D Whose licence requires conditions?

61 RSI objects to the application of conditions of licence from its Category C specialty service programming undertaking, to the network licence it is now seeking.

62 In our view, the CRTC is able to issue the same conditions to two different licences when they have different operating and programming requirements, and expire at different times. While we do not know the conditions under which the RSI network licence would operate (because its application lacks the necessary facts), we do know that RSI's Category C specialty service licence expires 31 August 2016,⁷³ while its proposed network licence would expire in four years, presumably in August 2018. In the absence of demonstrable harm, the CRTC should not change its condition of licence approach.

E Arguments against paying licence fees are unclear

63 RSI says that it should be exempted from the requirement to pay licence fees because it forgot to include this expense in its plans for the 2014-2015 season, and threatens to cancel proposed third-language programming to pay for these fees.

64 RSI's argument is not compelling. Rogers knew in July 2014 that it would have to file a network application, and should also have known that section 2 of the *Broadcasting Licence Fee Regulations, 1997* does not exempt television networks from the *Regulations'* requirements.

65 The CRTC should deny RSI's request not only because it has not provided any compelling arguments, but also because approval of the exemption will encourage every licensee going forward to forget to include the fees in their plans.

66 As for RSI's threat to cancel third-language programming, we are reminded of Rogers' remarks just seven months ago:

... we understand our responsibility to the Canadian broadcasting system. We respect our importance to Canadians of all ethnic backgrounds and of all

⁷² See e.g., *Telus Communications Inc. v. Canadian Radio-Television and Telecommunications Commission*, 2004 FCA 365, at ¶142: "A decision rendered in the absence of evidence, like a decision rendered without jurisdiction, is a nullity and reviewable as arbitrary."

⁷³ *Rogers Media Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2014-399 (Ottawa, 31 July 2014), Appendix 10, "Terms".

languages in all regions of the country. We appeared here to put forth a fair reasonable plan in an ever-changing broadcast atmosphere that we think upholds our responsibilities to the Commission and the Broadcasting Act.⁷⁴

67 The Forum respectfully submits that threats to cancel programming belie Rogers' claim that it understands its responsibilities to the broadcasting system. If RSI chooses to stand on this threat, the Forum urges the Commission to make the third-language programming proposed by RSI a condition of its network licence throughout its entire term, and to set required spending on this programming as a percentage of the network's total revenues.

IV Conclusion and recommendations

A Conclusion – the application's deficiencies make it 'unlicensable'

68 The Forum has reviewed the RSI network application. The absence of evidence about its structure, operations and programming, and the absence of commitments that will strengthen Canada's broadcasting system, make it so deficient that it cannot be issued a CRTC licence.

69 Quite simply, the *Broadcasting Act* and Parliament demand more.

B Recommendations

70 The CRTC has several options, in our view:

1. It could deny RSI's application, in the hopes that RSI will submit a complete application. If RSI declines to remedy the deficiencies in the current application, the Forum recommends that the Commission choose this option.
2. The CRTC could suspend this proceeding and return the application to RSI for re-working. Adopting this option could provide RSI with the time and direction needed to revise its answers to ensure that its application is complete. Once the Commission received the revised answers, it could resume the proceeding, inviting parties that have already intervened to review the new materials and submit comments.
3. The CRTC could use its authority under section 9(1)(b) of the *Broadcasting Act* to set conditions to ensure that the new RSI network helps to achieve Parliament's objectives for the broadcasting system. The Forum respectfully submits that, based on the publicly available evidence, the deficiencies in this application are so serious that an attempt by the CRTC to correct them through conditions of licence would be

⁷⁴ CRTC, *Transcript of Proceeding*, Vol. 2 (Gatineau, 9 April 2014), at ¶3129.

inappropriate. It would place the CRTC in the untenable position of micro-managing decisions that the applicant should have made.

4. The CRTC could hope that RSI answers the questions raised in the intervention process, so that the information provided completes the application. RSI is well able to do better, in our view. If it answers the questions raised in the intervention process – and if the CRTC provides interveners with a fair opportunity to reply to those answers – the CRTC would be in a better position to grant or deny RSI’s application.

71 The Forum would welcome a reasonable response from RSI that answers interveners’ concerns – but if additional answers are not forthcoming, the lack of information in the current application gives the Commission no choice but to deny it.

72 The Forum has three other recommendations.

73 First, RSI has noted that no CRTC forms are currently available for network television operations.⁷⁵ We believe the CRTC should develop a network application form.

74 Second, the CRTC’s current network policy is a quarter of a century old, predating the internet. The CRTC should initiate a proceeding to consider whether a new policy is necessary and if so, what it should address.

75 Third, we were unable to locate a response from the CRTC regarding RSI’s request for confidentiality.⁷⁶ We oppose this request, as its effect is to deny the public access to key information required to evaluate RSI’s application, specifically in terms of the benefits that the proposed service may be able to afford to provide to Canada’s broadcasting system. Respectfully, the public interest in understanding – at the very least – the total forecast revenues and expenses of RSI’s network, outweighs Rogers’ interests.

Thank you for the opportunity to submit comments on RSI’s intervention.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

[original signed by]

Monica L. Auer, M.A., LL.M.
Executive Director

execdir@frpc.net
613.526.5244

⁷⁵ RSI’s application, *supra* note 2, at 5, s. 2 (“Ownership”).

⁷⁶ RSI’s application, *supra* note 2, Cover letter, at ¶15.

89 Evergreen Drive

- c. Ms. Susan Wheeler,
Vice-President, Regulatory,
Rogers Media Inc.
susan.wheeler@rci.rogers.com

Appendix 1 Extracts of CRTC decisions about the CTV Network

1973⁷⁷

The CTV Network provides 48 hours per week of service.

“The Commission considers the statement of objectives and goals of the network which is included in the Affiliation Agreement to be commendable. These are, in part, to operate in Canada ‘... a national network program service in the public interest. Such services will be varied, balanced and designed in concept to serve the national interest comprising a balanced mix of the elements of information, public service, the arts and entertainment programming, within the overall capacity of the CTV System. The programming provided by the Network will conform to the policies and requirements of the Broadcasting Act...”

“The Commission is encouraged by the substantial increase in the Network’s Canadian program budget for the 1972-73 season”

“At the public hearing the Commission expressed the desire that the Network develop more drama programming with Canadian themes, concerns and locales. The Network acknowledged the need and stated it expected to introduce at least one new venture of this nature by the start of the 1973-74 season.”

“The Commission remains convinced that independent production sources can make valuable contributions to the Canadian broadcasting system. It considers that the system would be substantially stronger if there were a variety of creative contributors and that, given the necessary opportunities and encouragement, an exciting production milieu can exist outside the station organizations. The Canadian networks have a responsibility to help make this possible. **Consequently, the Commission expects the Network to enable its Management to commit a reasonable proportion of its programming budgets to independent production sources, other than the stations. ...”**

“The Commission is impressed by the effort of the Network to improve its operations and organizations. ...

“Because of the importance of the roles of the CTV network and its member stations in the Canadian broadcasting system, the Commission considers that a complete review of the performances of the Network and the stations should take place no more than three years from the recent hearing. ...”

⁷⁷ *Public Announcement*, (Ottawa, 22 January 1973), Decision CRTC 73-44 at 2-4.

1976⁷⁸ The CTV network affiliation agreement now provides for a minimum of 60 hours of network service.

“In its [1973 renewal] decision the Commission indicated its desire to see continuing increases in CTV’s budget for Canadian production. The response was encouraging as evidenced by an increase of 29% in this area in the 1974-75 season. The Commission notes the commitment by the network to continue concentrating on the improvement of the quality of its Canadian programs in the future.”

In its 1972 renewal hearing, CTV committed to establish a program development fund. “The Commission notes with approval an expenditure of nearly \$570,000 on this account during 1973, 1974 and 1975.”

“At the November 1972 Public Hearing the Commission expressed interest in developing drama with Canadian themes, concerns and locales. Subsequently, CTV presented ‘Excuse My French’, a weekly drama series produced by CFCF-TV in Montreal, employing French and English-speaking performers. ... **The Commission expects the network, in future schedules, to correct the deficiency of no weekly Canadian drama in the 1976-77 network schedule.**”

“The Commission commends the increase of news originations from points beyond Montreal, Ottawa, and Toronto. This increase results largely from the establishment of CTV news bureaux in a number of Canadian cities The Commission remains convinced that Canadian creativity is not confined to one or two major cities. In 1976-77, nearly 50% of CTV’s Canadian programs will originate in Toronto, approximately the same proportion as in 1975-76.”

“Because of the importance of the role of the CTV Network and its member stations in the Canadian broadcasting system at a time when technological developments are changing so rapidly, the Commission considers that a complete review of the performance of the network should take place within three years. ...”

1979⁷⁹ The Commission referred to the public-interest objectives of CTV’s 1973 affiliation agreement, and said that the network and its member stations had made “substantial progress ... in meeting this objective in relation to certain types of programming” – being information programs and sports.

⁷⁸ CTV Television Network LTD., Decision CRTC 76-395 (Ottawa, 5 July 1976).

⁷⁹ CTV Television Network Ltd., Decision CRTC 79-453 (Ottawa, 3 August 1979).

“The Commission considers that, in entering the 1980s, the CTV priority must be the strengthening of its Canadian entertainment programming, with particular emphasis on the development of Canadian dramatic programs capable of attracting viewers in the most competitive mid-evening hours.

Accordingly, it will be a condition of the renewal of the CTV network licence that 26 hours of original new Canadian drama be presented during the 1980-81 broadcasting year, and 39 hours of original new Canadian drama be presented during the 1981-82 season. ...”

“It is recognized that this condition will necessitate a substantial increase in the funds provided for the development and production of Canadian programs at a time when many other network costs are increasing. Nevertheless, the Commission is satisfied that the resources in the CTV system, both in terms of financial and production capability, are sufficient to sustain a significantly greater production effort. What is required now is the commitment of the member stations to employ these resources collectively.”

“While recognizing that it is impossible for CTV to match the scale of expenditures on program production that is common in the U.S., the Commission considers that a substantial increase in the production budgets of certain Canadian programs will be required in order to enhance their appeal to Canadian viewers.”

“...it is obvious that there are great variations in financial strength, capability and will to produce programs of national network calibre. The Commission considers that each member station should place primarily emphasis in its individual local operation on the provision of suitable news and public affairs programs. However, **in order to improve significantly Canadian entertainment programming, different resources of various stations should be combined for purposes of developing network programs capable of attracting audiences nationally. ...”**

“The Commission also considers that the network itself should be prepared to absorb more, if not all, of any shortfall between the cost of production and the lease payment made by the network to the producing station. ... It would be desirable for the network to assume much more of the risk and the expense that it now does in many instances. Obviously this will require the provision by the member stations to the network of substantially greater funds for programming.”

“... the primarily objective should always be the development of programs of interest to Canadian audiences.”

CTV appealed this decision to the Federal Court of Appeal, which set aside the decision, and referred the licence renewal back to the CRTC for reconsideration

and redetermination, to provide CTV with a reasonable opportunity to produce evidence and make representations about the conditions of licence. The Supreme Court of Canada subsequently reversed the FCA's decision: CRTC v. CTV Television Network Ltd. Et al., [1982] 1 SCR, rev'g [1981], 2 F.C. 248 [FCA].

1981-1985 Decisions CRTC 81-460 (Ottawa, 22 July 19 81), 84-265 (Ottawa, 14 March 1984) and 85-214 (Ottawa, 19 April 1985) granted CTV short-term administrative renewals

1987⁸⁰ CTV committed to provide 64 hours and 50 minutes per week of network service

“The decision to renew CTV's licence for five years is predicated upon expectations and conditions of licence which increase over the term of the licence. **These expectations and conditions of licence are based on CTV's commitments, are consistent with the network's resources and potential and will result in a substantial improvement in the network's service.**”

“The Commission wishes to express its considerable disappointment with the network's failure to respond adequately at the hearing to the Commission's questions regarding long-term strategies and objectives. The Canadian broadcasting system is undergoing important changes and the CTV network is a major player in these developments. Furthermore, CTV's own affiliates will be appearing before the Commission in the autumn of 1987 to renew their licences and they too require clear indications as to the network's intentions. The Commission is therefore surprised at the network's apparent failure to formulate long-term plans.

“The Commission requires the best possible advice regarding the future of the broadcasting system from those in a position to provide it. Without detailed information and opinion from the principals involved, the Commission's role in the development of a dynamic broadcasting system is made more difficult.”

“During the five years between 1981-82 and 1985-86, CTV expended approximately \$230.2 million on Canadian programs. **The foregoing conditions of licence would require total expenditures on Canadian programs over the five years 1987-88 to 1991-92 of at least \$403.0 million. This requirement represents an increase of 75.1 % by comparison with the five-year period ending in 1985-86.**”

⁸⁰ CTV Television Network Limited, Decision CRTC 87-200 (Ottawa, 24 March 1987), <http://www.crtc.gc.ca/eng/archive/1987/DB87-200.HTM>.

“(ii) Sports

“CTV has traditionally provided Canadian viewers with a wide variety of Canadian and international sports programming, both professional and amateur. The Commission wishes to commend the network for the quality and variety of its sports programming and expects that the network will continue to reflect this important aspect of our national life. The Commission notes that much of the production of CTV sports programming is carried out by the network's affiliates. This has encouraged many affiliates to upgrade their production facilities and has provided Canadian viewers with the important opportunity to witness various regional sports activities.

“The Commission also notes CTV's commitment to broadcast the Canada Cup hockey series in 1987/88, in addition to at least 104 hours per year of the regularly scheduled Wide World of Sports.

“The Commission also wishes to commend CTV for the scale of its participation in the coverage of the 1988 Winter Olympics to take place in Calgary. CTV and Le Réseau de télévision TVA Inc. will provide English-and French-language coverage across Canada. As host broadcaster, CTV will be responsible for covering all of the events and associated activities as well as providing an international feed for foreign broadcasters. Coverage of this event will also involve the participation of affiliates and permit them to acquire international experience and exposure, as well as provide them with a unique opportunity to acquire and amortize state-of-the-art equipment and mobile facilities. The Commission is confident that CTV's role in the televising of the Calgary Olympics will be a credit to Canadian expertise in sports programming.”

“(v) Network Program Development Fund”

“During the Public Hearing, discussion took place with regard to the status of CTV's Canadian Program Development Fund. This fund was established in 1972 and currently provides for the development of new Canadian programming in the categories of drama, variety, children's programming and documentaries. ... CTV made it clear, however, that it intends to continue to make development funds available and that it recognizes the importance of having a "development attitude".

“The Commission considers that it is critically important to develop new Canadian talent in the television production industry. All Canadian broadcasters, particularly networks with their considerable resources, must share in this responsibility if the Canadian broadcasting system is to achieve the high levels of Canadian programming expected of it. With this in mind, the Commission expects CTV to maintain its program development fund. In the absence of clear network administrative procedures and with the benefit of the

discussion at the hearing, the Commission considers it appropriate to reiterate the general guidelines discussed at the hearing with regard to the objectives, definition and administration of the fund.

“The objective of the fund should be to ensure that CTV continuously invests in the script and concept development phases of Canadian entertainment and documentary projects. Emphasis should be placed upon providing "seed" money to less experienced writers, directors and producers in order to encourage the development of innovative projects and Canadian creative talent.

...

“The fund should provide a minimum of \$500,000 per year and the Commission should be given a clear indication of how the fund will be administered and how to access the fund.

“Finally, the Commission expects CTV to submit an annual report by 31 August of each year describing the projects which have received support from the fund, their current status, the amounts allocated to each project, and the general areas in which expenses were incurred.”

1992-93 Decisions CRTC 92-442 (Ottawa, 3 July 1992) and 93-101 (Ottawa, 30 March 1993) grant CTV short-term administrative renewals because the network’s future ownership structure was unresolved.

1994⁸¹ CTV network sales time amounts to 40 hours/week, including 12 hours from 7 pm to 11 pm.

“The most significant difference between the old and new agreements is that, instead of receiving compensation based on a sharing of all network profits, affiliates are now guaranteed fixed annual cash payments from the network in return for the airtime used by CTV for the broadcast of its network service, regardless of the actual revenues earned by CTV. **The total amount of these annual payments is scheduled to increase from \$14.8 million in 1994-95 to \$21.8 million in 1998-99.** The payments to affiliates are scheduled to rise further to \$25.2 million by the end of seven years. CTV’s President and Chief Executive Officer, Mr. J. M. Cassaday, noted at the hearing that this amount would represent a return of approximately 14% on CTV’s projected net revenue

⁸¹ CTV Television Network Ltd., Decision CRTC 94-33 (Ottawa, 9 February 1994), <http://www.crtc.gc.ca/eng/archive/1994/DB94-33.htm>.

which, he stated, "... is approximately the level of payment that, coincidentally, the affiliates had been accustomed to historically".

"Affiliates will also continue to earn revenues from their insertion of two minutes of advertising in each hour of network sales time programming. ... these revenues would represent close to 20% of those earned by CTV during the same one-hour period for programming, the expenses of which are all accounted for within the network's operation.

"The Commission considers that CTV's compensation to its affiliates for use of their airtime is, at the very least, generous. Because the compensation is fixed in each year, and is thus independent of the network's profitability, these arrangements could affect CTV's ability to meet its responsibilities should revenues fall short of projections in any given year. **Although the Commission, elsewhere in this decision, discounts the likelihood of such a revenue shortfall during the new licence term, it would expect the licensee's shareholders and affiliates to act responsibly should such an event occur, and ensure that the network has adequate resources to fulfil its obligations.**"

"The Commission considers that the critical acclaim earned by CTV and other Canadian broadcasters for their long-form drama productions, and the growing popularity of this programming among Canadian viewers, has raised the level of importance of this type of programming as a vehicle for cultural expression. **In recognition of this fact, and as a means to ensure the continued availability of long-form Canadian drama, the Commission has again included a condition of licence specifying minimum requirements for programming in this category.**"

"...the Commission has determined CTV to have met the condition of licence requirements for regularly-scheduled Canadian drama in each of the first four years of its licence term. In the fifth year, however, the amount of drama regularly-scheduled for broadcast during network sales time, and after 8:00 p.m., fell 30 minutes per week short of the requirement for a weekly average of 3 hours 30 minutes."

"VI Conclusion"

"As indicated above, the Commission is satisfied with most aspects of the licensee's past performance, and has encouraged CTV to pursue its course in these areas. **In others, the Commission has concluded that the network not only bears a responsibility, but should also have the necessary financial and other resources, to perform to higher standards than either those achieved in recent years or those proposed in the renewal application.**

"In establishing these minimum requirements, the Commission is satisfied that they are achievable, notwithstanding the apparent constraints on the flexibility

available to CTV under the terms of its new agreements with affiliates and, more particularly, notwithstanding the licensee's revenue projections, which the Commission has concluded are more conservative than warranted in the circumstances.”

- 1998 Decision CRTC 98-34 (Ottawa, 11 February 1998) – short-term administrative renewal
- 2000 Decision CRTC 2000-268 (Ottawa, 12 July 2000) – short-term administrative renewal

* * * End of document * * *