



December 7, 2012

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Mr. Traversy:

**Re: Broadcasting Notice of Consultation CRTC 2012-560-2
Item 9: OWN Inc., Application 2012-1422-0**

1. These are the comments of the Canadian Media Production Association (“the CMPA”)¹ respecting the above-noted item, namely the application to amend the licence of the specialty Category A service known as the Oprah Winfrey Network (OWN) in order to change the definition of the term “broadcast day” so as to mean the 24-hour period beginning each day at 6:00 a.m.
2. The CMPA opposes this application.
3. The CMPA believes that a viable OWN which adheres fully to its nature of service definition (NoS) would be good for the Canadian broadcasting system, as OWN would then contribute to programming diversity as well as continue to support the creation and presentation of Canadian programming through its regulatory obligations as a Category A service. The CMPA therefore appreciates that OWN has proposed constructive steps to ensure that its programming will comply fully with its NoS.
4. However, OWN has not explained why it needs to extend the length of its “broadcast day” in order to meet its NoS obligations. The CMPA is concerned that the only reason it seeks the extension is in order to meet its NoS obligations by “dumping” related Canadian programming into the midnight to 6:00 a.m. overnight period.

¹ The CMPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. The CMPA’s member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

5. OWN's NoS requires it to allocate 55% of its current 18-hour "broadcast day" to category 5(a) (formal education) programming. While spreading this obligation over a 24-hour "broadcast day" would generate almost two and a half more hours of such programming², it would also allow OWN to move a full 6 hours to the overnight period.
6. In Decision CRTC 2001-231³, the Commission denied a similar application to adopt a 24-hour broadcast day by the then-Category 1 (now Category A) service Bravo! While the Commission acknowledged the applicant's argument that the longer "broadcast day" would result in more hours of Canadian programming on the service, it nevertheless observed that:

"Audience measurements show that, on a national basis, very few Canadians view television programs during large portions of the midnight - 6:00 a.m [stet] period. The extra Canadian programs broadcast during this period would, in many cases, reach very small audiences."⁴
7. To the CMPA's knowledge, it remains the case that very few Canadians view television programs during large portions of the overnight period, meaning that very few Canadians would benefit from the programming OWN would schedule during that period in order to meet its NoS.
8. The CMPA also notes that, because of their privileged carriage status, Category A services like OWN are obliged to contribute substantially to the creation and presentation of Canadian programming; commensurate with this status and obligation, they are generally required to meet their Canadian programming regulatory requirements over an 18-hour broadcast day, when the largest audiences are available. Indeed, all of the Category A services whose licences were renewed in 2011 as part of the Group Licence Renewal process are subject to an 18-hour "broadcast day".⁵ It is only Category B services, which do not have privileged carriage status and thus have fewer Canadian programming obligations, which are given the flexibility to choose either an 18- or 24-hour "broadcast day".⁶ Notably, the examples OWN refers to in its application, to support its request, are all Category B services.⁷
9. The CMPA would have fewer concerns with this application if the Commission were to ensure OWN could not use the overnight period as a "dumping ground" for the Canadian programming it must offer in order to meet its NoS, and that other specialty programming services could not then seek the same flexibility to accomplish the same objective.

² (55% of 24) – (55% of 18) = 13.2 – 10.8 = 2.4 hours.

³ <http://www.crtc.gc.ca/eng/archive/2001/DB2001-231.HTM>.

⁴ Ibid, at par. 8.

⁵ See Broadcasting Decisions CRTC 2011-444, 2011-445, 2011-446 and 2011-447.

⁶ See <http://www.crtc.gc.ca/eng/forms/efiles/f125s.htm>.

⁷ MuchLoud, MuchVibe and ESPN Classic.

10. Absent such a restriction, the CMPA fails to see how approval of this application would result in a net contribution to Canadian programming and to program diversity, and so be in the best interests of the Canadian broadcasting system.
11. The CMPA does not wish to appear at the 11 December 2012 hearing.

Sincerely,

original signed by

Michael Hennessy
President & CEO

cc sylvie.courtemanche@corusent.com

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