**Oral Remarks by**

**Canadian Media Production Association (CMPA)**

**Broadcasting Notice of Consultation CRTC 2014-26**

**Rogers Broadcasting Limited *et al* Renewals**

**April 9, 2012**

**Check against delivery**

Good morning Mr. Vice-Chairman, Commissioners, and CRTC staff. My name is Michael Hennessy and I am President and CEO of the Canadian Media Production Association. Joining me today is Jay Thomson, our VP Regulatory.

While we generally support Rogers' renewal applications for CITY TV and its specialty services, there are nevertheless certain issues triggered by those applications that I'd like to address today – issues that go to the root of what makes the Canadian broadcasting system work for consumers, creators and citizens.

The first issue is the continued mis-positioning of Terms of a Trade as bad for the broadcasting system.

The second is the impact to date of the Commission's Group Licensing Framework, which Rogers now wants applied to it.

The third issue pertains to hockey, and, specifically, our concerns about how Rogers will record and allocate its NHL revenues and expenses, and how much CPE will be consumed by hockey.

And fourth and tangentially, there's the issue here of whether, given regulatory support for vertical integration and the flexibility that flows from the GLF, it is fair to target one channel, like OMNI, or one group of suppliers, like independent producers, on the cost side when the company as a whole is net better off.

To begin with, however, the CMPA would like to indicate our appreciation to Rogers for withdrawing its request that CITY TV and its specialty services be relieved of their conditions of licence requiring them to adhere to a Terms of Trade Agreement with the CMPA. We also appreciate that Rogers acknowledged that, in respect of those services, it is contractually bound by the current Agreement until 2016.

Incidentally, we'd point out that Rogers is contractually bound by the Agreement in respect of its OMNI stations, too.

For producers, Terms of Trade is critical for ensuring fair treatment and the opportunity to exploit the intellectual property in the productions they develop and deliver to broadcasters like Rogers.

No doubt, the Terms of Trade condition of licence will be debated at the group licence renewal proceeding in 2016. We only raise the issue today as an example of how Rogers bases many of its arguments on accentuating the negative, while ignoring the fact that it is able to spend billions of dollars on NHL hockey and spectrum due to licences that it has been granted in the content and distribution markets.

Another example is Rogers is focusing on the decline in ad revenues on OMNI, while ignoring the revenue opportunities and cost savings that accrue across its multiple channels and platforms, and that will come from its broadcasting of hockey in CBC's prime time.

A key issue in this proceeding is whether to bring Rogers under the Group Licensing Framework, which will allow it to shift expenditures within its broadcast group. As we stated in our written intervention, we support Rogers coming under the GLF, particularly since adherence to Terms of Trade is a fundamental component of the Framework.

We also submit that aligning the Rogers licence terms with those of the others subject to the Framework makes sense, even if we have concerns about the long term impact of the GLF. It is only fair that Rogers and the other large broadcasting groups are treated in a similar fashion.

Additionally, it is important that all stakeholders can engage in a collective and comprehensive review of the Framework and its impact at the renewal proceeding that will come in 2016.

We can tell you right now, though, that independent producers are already feeling the impact of the framework on their businesses, some of it good; some of it not so good.

We recently surveyed a cross-section of our members to get their anecdotal "mid-term report" on the Framework. "Anecdotal" because the data needed to track the shifts in spending under the GLF is not publicly available to stakeholders like the CMPA.

Overall, it seems safe to say that producers and broadcasters alike are still adjusting to the new system. The upside so far seems to be a movement toward bigger budget, high production value dramas that are attracting larger audiences.

The flip side of that, however, is that producers of more niche programming targeted to the more genre-specific specialty channels, including kids and non-scripted programming, are finding there's less funding and fewer opportunities for their shows. That raises a red flag if it means the GLF is contributing to a significant decline in diversity in our broadcasting system.

So, in the context of <u>this</u> proceeding, this begs the question: will bringing Rogers into the Group Licensing Framework ultimately be a good thing for the system?

Answering that question would have been a lot easier before last November, when Rogers announced its NHL deal. Before Rogers spent over $5 billion to acquire hockey rights, we could have been much more confident that, by taking on the new CPE and PNI obligations associated with the GLF, Rogers would up its investment in *various* Canadian programming genres. On its face, that would clearly seem good for the system.

Now, however, we have to wonder if hockey fans will be the only ones to benefit from Rogers' new group status. Yesterday's Panel discussion did not provide us any comfort with respect to that question.

The CBC deal may further compound this problem. The CBC deal has to be net positive for Rogers in terms of the ad dollars it will deliver to Rogers from free use of the public broadcaster's prime time. Yet we do not know whether these revenues will contribute to Rogers' group CPE contributions, as we argue they should, or be sheltered from them, which we argue would be wrong. Rogers is not simply a producer as was suggested yesterday. Under its CBC deal, it will control the content and broadcast space, and derive ad revenues from exhibition. That looks more like a broadcaster than a producer to us.

Rogers' answer to you yesterday about how it will account for the revenues associated with hockey on CBC was very vague. You subsequently asked for Rogers to report annually on its accounting practices for hockey, which is a good thing. But this still does not confirm an obligation for Rogers to include the CBC hockey revenues in its group CPE base.

Mr. Vice-Chairman: we have nothing against hockey fans. What we are concerned about, though, is that, under the GLF, Rogers will now have the motivation as well as the opportunity to allocate both its revenues and its costs in a manner that will help its new hockey broadcasting business at the expense of its support for other genres of Canadian programming.

For example, given that Rogers intends to broadcast hockey on a number of its different services, it could be motivated to allocate more of its hockey revenues to the services *outside* its group, to reduce its group CPE base, while allocating more of its hockey costs to services *within* its group, to claim as group Canadian programming expenditures.

Similarly, with its group spending flex, Rogers presumably could allocate a large portion of its CPE obligations for CITY, G4, Bio and OLN to Sportsnet 360, again to pay for hockey programming. The result could then be that Rogers' inclusion in the GLF could actually lead to *less* support for Canadian programming – at least for programming that is not hockey.

While we worry that the large broadcasters can already use their CPE and PNI spending flex to shift their expenditures away from certain underserved genres of programming, Rogers' emphasis on hockey may take this problem to an even greater level.

Mr. Vice-Chair and Commissioners: these concerns lead us once again to call on the Commission to make available data that shows how the broadcasters are using their GLF spending flex.

You've heard our message before, not just from us but from others, too: if the Commission does not soon provide the data necessary so we can examine how and where the broadcasters are allocating their CPE and PNI dollars, come 2016 stakeholders will be severely constrained in our ability to help you assess the overall impact of the Group Licensing Framework. We note that Rogers supports our request in this respect.

We'd be happy, as always, to work with Commission staff to help define what data should be made available to address this important issue.

Thank you, Mr. Vice Chair, Commissioners.  We would now be pleased to answer your questions.

## CMPA Seating Chart

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| Jay Thomson | Michael Hennessy |