

February 15, 2018

Filed via Intervention/Comment/Answer Form

Mr. Claude Doucet
Secretary General
Canadian Radio–television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Doucet:

Re: Rogers Media Inc. Broadcasting Licence Renewal Application for City Saskatchewan (formerly Saskatchewan Communications Network) (Application no. 2017–0833–0) – Intervention from the Canadian Media Producers Association

Introduction

1. The Canadian Media Producers Association (CMPA) is pleased to provide the following comments with respect to Rogers Media Inc.’s (“Rogers”) broadcasting licence renewal application for City Saskatchewan.
2. The CMPA is the country’s leading member–based advocacy organization for independent producers. We represent hundreds of companies engaged in the development and distribution of English–language content made for television, cinema, and digital media channels. The CMPA works to promote the continued success of the Canadian production sector and to ensure a future for the diverse content made by Canadians for both domestic and international audiences.
3. The CMPA supports the renewal of the broadcasting licence for City Saskatchewan, subject to the following comments.

Executive Summary

4. The CMPA conditionally supports the renewal of the broadcasting licence for City Saskatchewan. We commend Rogers' commitment to Canadian, educational, and independently-produced programming since it acquired this television service. In particular, we applaud Rogers' proposal to increase Canadian programming expenditure (CPE) levels from 23% to 30% of the previous year's gross revenues in the new licence term based on the Commission's determination that CPE requirements for provincial educational services would remain unchanged in Broadcasting Regulatory Policy CRTC 2015-86 (the "Create Policy"). We also support the request for City Saskatchewan to remain exempt from local programming requirements, including the local news requirements set out in Broadcasting Regulatory Policy CRTC 2016-224. Unlike local television stations, City Saskatchewan's mandate is to provide educational programming to the citizens of Saskatchewan and its conditions of licence (COLs) should reflect this focus.
5. While the CMPA generally supports many of Rogers' proposals regarding Canadian, educational, and independently-produced programming, this support is conditional upon various clarifications provided in this intervention, namely that Rogers:
 - maintains its recently-amended COL relating to the exhibition of educational programming in tandem with the expanded definition of "educational programming" for related expenditures;
 - agrees to provide an annual report relating to educational programs which fulfill its COLs regarding the exhibition of, and expenditures on, educational programming;
 - continues to be required to make all expenditures on Canadian and educational programming to Canada's independent producers with its proposed reductions to requirements related to Saskatchewan's independent producers for educational programming; and
 - maintains the same levels of Canadian programming exhibition.
6. All of these clarifications and conditions are, in our submission, necessary for City Saskatchewan to maintain its status as the province's educational broadcaster and to ensure this service continues to make meaningful contributions to the broadcasting system.



7. Finally, we take this opportunity to request that the Commission review its standard definition of “independent production company” and to emphasize the importance of transparent reporting.

The CMPA supports Rogers’ proposal to broaden the definition of “educational programming” provided that the condition of licence relating to the exhibition of educational programming is maintained

8. In its licence renewal application, Rogers proposes to increase City Saskatchewan’s expenditure requirement on educational programming from 3% to 23% of its previous year’s gross revenues on the condition that the Commission broaden the definition of “educational programming” to include more television program categories. Specifically, Rogers requests that programming drawn from categories 2(a) and (b) be included with the current educational categories of 5(a) and (b) and “other programming accredited as a learning resource” within the definition of “educational programming.” According to Rogers, this request would align City Saskatchewan’s “educational programming” definition for expenditures with its recently-amended COL #3 relating to the exhibition of educational programming.¹ In BD 2016-133, the Commission approved a request by Rogers to allow programming accredited by an educational institution or Saskatchewan’s Ministry of Education to satisfy the service’s educational programming exhibition requirements.
9. The CMPA supports Rogers’ proposal to expand the definition of “educational programming” provided that City Saskatchewan will continue to adhere to COL #3 in the new licence term. The effect of these dual requirements regarding the exhibition of educational programming and its related expenditures will ensure that City Saskatchewan continues to provide quality educational programming to the people of Saskatchewan as the province’s educational broadcaster. Accordingly, we support Rogers’ proposed amendment to the definition of “educational programming” on the condition that Rogers confirms it will adhere to the following COLs in the new licence term:

- *3) a) The licensee shall devote no less than 60% of the broadcast month to the broadcast of:*

¹ Broadcasting Decision CRTC 2016-133, *City Saskatchewan - Licence amendment* (BD 2016-133).



i. programming drawn from categories 2(a) Analysis and interpretation, 2(b) Long-form documentary, 5(a) Formal education and pre-school and 5(b) Informal education/Recreation and leisure; and

ii. other programming which has been accredited as a learning resource by an educational institution in Saskatchewan or the Ministry of Education of Saskatchewan.

b) A minimum of 40% of that programming must:

i. be drawn from categories 5(a) and 5(b); or

ii. be accredited as a learning resource by an educational institution in Saskatchewan or the Ministry of Education of Saskatchewan and be devoted to educational programming directed to preschool children or to educational programming with clear learning objectives and comprising part of a formal learning system that leads to formal assessment and accreditation by an educational institution of Saskatchewan.²

- *The licensee shall devote to the acquisition of or investment in educational programming, in each broadcast year of the licence term, 23% of the licensee's previous year's gross revenues.*

- *For the purpose of these conditions of licence, educational programming means:*

i. programming drawn from categories 2(a) Analysis and interpretation, 2(b) Long-form documentary, 5(a) Formal education and pre-school and 5(b) Informal education/Recreation and leisure; and

ii. other programming which has been accredited as a learning resource by an educational institution in Saskatchewan or the Ministry of Education of Saskatchewan.

10. The CMPA is supporting Rogers' request because it does not appear that the introduction of this new definition will result in the dilution of quality educational programming for City

² *Ibid.*, para. 10.



Saskatchewan. However, we caution the Commission to closely monitor the licensee's educational programming in the new licence term.

11. The CMPA suggests that in order to allow the Commission and the public to monitor City Saskatchewan's educational programming, the Commission should require Rogers to provide an annual report for the educational programming titles broadcast on City Saskatchewan to meet its educational programming COLs. This report should identify the names of production companies; the television program category or accreditation as a learning resource; whether the productions are independent, affiliated, or in-house; location of principal photography, whether the productions are produced in Saskatchewan, and whether the producer is part of an Official Languages Minority Community (OLMC).³
12. Such a COL would not be unduly onerous as Rogers currently submits a list of programs accredited as "learning resources" to the Commission on a monthly basis with its programming logs and such reports are required by broadcasters with COLs regarding programs of national interest (PNI).⁴ As well, this new educational programming report could replace one of the licensee's current annual reports regarding learning opportunities for category 7 programming,⁵ which Rogers is requesting to delete due to its lack of relevance. A report on educational programming would be more relevant to City Saskatchewan's COLs and would provide comfort that the province's educational broadcaster is maintaining its high level of educational programming and is continuing to meet its important educational mandate. Accordingly, the CMPA requests that the Commission impose the following COL:

- *The licensee shall file an annual report listing the program titles which fulfill the conditions of licence regarding the exhibition of, and expenditures on, educational programming. This report shall identify the production companies; the television program category or accreditation as a learning resource; whether the productions are independent, affiliated, or in-house; location of principal photography, whether the productions are produced by independent production companies in Saskatchewan, and whether the producer is part of an Official Languages Minority Community (OLMC).*

³ The CMPA notes that these same categories are included in the Commission's standard PNI reports for licensees.

⁴ City Saskatchewan broadcasting licence renewal application, Reply to deficiency letter dated October 20, 2017, response #5.

⁵ Appendix to Broadcasting Decision CRTC 2012-339, COL #7.



The CMPA supports Rogers' proposal to reduce the required programming expenditures to Saskatchewan's independent producers on the condition that all its expenditures on Canadian and educational programming continue to be made to Canada's independent producers

13. Under its current COLs, City Saskatchewan must devote all required expenditures on Canadian and educational programming to independent producers in Saskatchewan.⁶ Rogers proposes that the Commission reduce this obligation by imposing a new COL that it must direct at least 85% of City Saskatchewan's expenditures on educational programming to the Saskatchewan independent production sector. The CMPA supports this amendment as long as Rogers will continue to adhere to the obligation that all programming expenditures required by its proposed COL regarding educational programming expenditures⁷ and its proposed COL regarding CPE⁸ shall be allocated to Canadian independent production companies. We recognize that Rogers is proposing to increase its commitments to CPE and educational programming in the new licence term but these increases should not come at the expense of its obligations relating to independent production. Our proposed amendment will ensure a strong and continued commitment to the independent production sector while giving Rogers the requested flexibility to "acquire a small amount of educational programming from Canadian production companies outside of Saskatchewan."⁹ Accordingly, the CMPA requests that the Commission impose the following COLs on City Saskatchewan relating to independent production in the new licence term:

- *All programming expenditures in conditions of licence X and Y must be made to a Canadian independent production company or companies;¹⁰*
- *At least 85% of the licensee's expenditures on educational programming must be made to an independent production company or companies carrying on business in Saskatchewan.*

⁶ *Ibid.*, COL #20.

⁷ i.e. that the licensee shall devote to the acquisition of or investment in educational programming, in each broadcast year of the licence term, 23% of the licensee's previous year's gross revenues.

⁸ i.e. that the licensee shall devote to the acquisition of or investment in Canadian programming, in each broadcast year of the licence term, 30% of the licensee's previous year's gross revenues.

⁹ City Saskatchewan broadcasting licence renewal application, Supplementary Brief, para. 22.

¹⁰ Where "X" refers to the COL relating to City Saskatchewan's educational programming expenditure requirements and "Y" refers to the COL relating to City Saskatchewan's Canadian programming expenditure requirements.



14. We also request that the Commission maintain the following expectations regarding City Saskatchewan staff because it will ensure the province's educational broadcaster maintains its strong connection with the local independent production community despite a decreased obligation for programming expenditures relating to independent producers in Saskatchewan:

- *The Commission expects City Saskatchewan to maintain its operations and staff in Regina; and*
- *The Commission expects Rogers to ensure the presence of a senior executive at City Saskatchewan to be the primary point of contact for Saskatchewan producers.¹¹*

The CMPA requests that the Commission maintain City Saskatchewan's condition of licence regarding the exhibition of Canadian programs

15. Currently City Saskatchewan must devote no less than 55% of the broadcast year and 50% of the evening broadcast period to the broadcasting of Canadian programs. In terms of actual broadcasting hours, this COL represents the broadcasting of close to ten hours of Canadian programming per day, with three of those hours in the evening broadcast period.¹² Rogers has requested an amendment in the new licence term so that its service will only be required to devote 50% of the evening broadcast period to Canadian programs with no overall requirement. In practice, this request means that City Saskatchewan will be required to broadcast only three hours of Canadian programming per day with all these hours occurring between the hours of 6:00 P.M. – 12:00 midnight. In other words, this request represents a reduction of almost seven hours of Canadian programming each day.

16. While Rogers' request is in accordance with the Commission's determinations in the Create Policy that conventional television stations will only be required to devote 50% of the evening broadcast period to Canadian programming, the CMPA requests that the Commission maintain City Saskatchewan's current COL regarding the exhibition of Canadian programs.

¹¹ Please note that the CMPA has updated the underlined terms in these expectations to reflect the current names of the television service and licensee.

¹² Pursuant to sections 2 and 4 of the *Television Broadcasting Regulations, 1987*, 55% of the "broadcast day" (18 hours) is 9.9 hours and 50% of the "evening broadcast period" (6 hours) is 3 hours.



17. The Commission acknowledged that it may consider exceptions to its new approach to the exhibition of Canadian programming in the Create Policy:

[T]here may be services which will require a more individual approach to exhibition requirements. As an example, peak viewing periods are different for children's and youth programming. These particular circumstances will be considered at licence renewal on a case-by-case basis as required.¹³

18. It is critical that Canada's children and youth are able to see themselves and Canadian values reflected in their programming. City Saskatchewan's peak viewing periods should occur during the daytime when it is broadcasting educational programming to children's and youth audiences. As such, it would be more appropriate for the Commission to ensure the broadcasting of Canadian programs during the daytime.

19. Furthermore, provincial educational broadcasters hold a special place in the broadcasting system due to their educational programming mandates and should thus provide a greater commitment of Canadian programming than conventional television stations. Reducing its commitment by almost seven hours per day is not reflective of the special status of educational broadcasters. For all of the above reasons, the CMPA requests that the Commission maintain the following COL relating to the exhibition of Canadian programming:

- *The licensee must devote no less than 55% of the broadcast year and 50% of the evening broadcast period to the broadcasting of Canadian programs.*

The Commission should review its definition of "independent production company" to ensure that programs which fulfill independent production expenditure requirements are truly independently produced

20. The CMPA wishes to address some serious concerns regarding the overall integrity of COLs related to independent production. The Commission's current definition of "independent production company"¹⁴ fails to ensure that programs claimed by broadcasters as "independent" are truly independent in terms of ownership and control or that independent

¹³ Create Policy, para. 196.

¹⁴ Appendix to Broadcasting Decision CRTC 2013-383, COL#8.



producers retain a meaningful share of the intellectual property rights or profits associated with the content they produce. We are concerned that the Commission's practices are not ensuring that the broadcasting system includes a "significant contribution" from the Canadian independent production sector.¹⁵ Accordingly, the CMPA requests that the Commission update the definition for "independent production company" provided with respect to the COLs for City Saskatchewan in the new licence term.

21. Some broadcasters are exploiting the current definition of "independent production company" to structure and claim programs that they effectively own and control – which necessarily means those programs are not independently produced but are service productions – for the purposes of meeting their COLs. Allowing broadcasters to claim programs that they own and control as "independent" means that the current definition of "independent production company" is not achieving the objectives of Canada's broadcasting policy with respect to independent production.
22. The CMPA requests that the Commission replace the current definition of "independent production company" at all licence renewals to ensure that the programs commissioned and claimed as meeting broadcasters' independent production COLs are actually independently produced. The CMPA proposes the following new definition:

For the purpose of this condition of licence, "programs produced by independent production companies" means programs produced by a Canadian company carrying on business in Canada with a Canadian business address, owned and controlled by Canadians, whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, none of the equity, and in respect of which the licensee and any related entities is not identified as the producer in the program's credits and does not own or control, directly or indirectly, and cannot exploit or acquire to its benefit any of the following:

- *The copyright in the program;*
- *Any rights upon which the program is based (the underlying rights);*

¹⁵ *Broadcasting Act*, s. 3(1)(i)(v).



- *Any non-Canadian distribution or licence rights to the program, or to any products or projects ancillary or derivative to the program;*
- *A share of net profits, or revenue share (unless derived from the exploitation of the program, or any products or projects ancillary or derivative to the program), and provided that such share does not exceed, on a percentage basis, the licensee's (including any affiliated or related entities) cash contribution that is over and above the licensee's (including any affiliated or related entities) fair market value cash licence fee contribution to the financing of the program's budget; and*
- *An equity share in the program, or in any products or projects ancillary or derivative to the program, unless such share does not exceed, on a percentage basis, the licensee's (including any affiliated or related entities) cash contribution that is over and above the licensee's (including any affiliated or related entities) fair market value cash licence fee contribution to the financing of the program's budget.*

23. The CMPA has called upon the Commission to review this definition in previous interventions, including the group licence renewal proceeding for English-language services,¹⁶ the first phase of the broadcasting consultation on future programming distribution models,¹⁷ and Aboriginal Peoples Television Network's application for renewal of its broadcasting licence and mandatory distribution order.¹⁸ We are also including this request in our interventions with respect to Blue Ant Television's broadcasting licence renewal applications (Application nos. 2017-0841-3 and 2017-0842-1) and DHX Television's broadcasting licence renewal applications (Application nos. 2017-0821-5, 2017-0822-3, and 2017-0823-1). The Commission could begin addressing this matter by updating the definition for "independent production company" at licence renewals in order to ensure that the objectives of the Act relating to independent production are being met.

¹⁶ Broadcasting Notice of Consultation CRTC 2016-225, *Renewal of television licences held by large English- and French-language ownership groups*.

¹⁷ Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models*.

¹⁸ Application no. 2017-0641-7.

Transparent reporting by broadcasters is integral to the public interest

24. The CMPA wishes to draw attention to the critical importance of transparent public reporting by broadcasters in the licence renewal process and annual reports. Generally speaking, the release of data related to COLs allows the public to monitor broadcaster compliance and instills public confidence in the regulation of the broadcasting system. It also allows interveners to provide more informed feedback in policy and licensing proceedings.
25. With respect to independent production COLs, we note that the Commission provides a standard form to broadcasters for their annual PNI reports including a “producer information” section to identify the names of production companies; whether the productions are independent, affiliated, or in-house; location of principal photography, whether the productions are regionally produced, and whether the producer is part of an Official Languages Minority Community (OLMC). Unfortunately, broadcasters do not uniformly provide this requested information as part of their PNI reports. Without this data, the public is unable to properly monitor broadcaster compliance with independent production COLs. In order to hold broadcasters accountable to the public for their PNI and independent production COLs, the CMPA requests that the Commission ensure that all of the information requested in the PNI reports is provided during annual reports, especially the “producer information” section.
26. City Saskatchewan, however, does not have any COLs related to PNI, which means that the Commission does not currently request public reporting regarding its independent production. In order to allow the public to monitor the licensee’s compliance with respect to independent production in the new licence term, we request that the Commission require City Saskatchewan to provide much of the same information requested in the “producer information section” of the PNI reports for educational programming. For these reasons the CMPA has requested that the Commission impose an annual report outlining educational programming above.
27. It is also important that the Commission gather data regarding broadcasters’ digital media revenues. City Saskatchewan’s programming is available online through its website citytv.com/saskatchewan and the City video app. Given the digital shifts in the market, it is

imperative that the Commission use its information gathering power to obtain accurate, up-to-date data regarding broadcasters' digital media revenues to both monitor the evolution in the market and to ensure that the Commission has the latest data to inform its policy decisions. This data request is in accordance with the Commission's information gathering requirements as articulated in section 4 of the *Digital Media Exemption Order*.¹⁹ The Commission possesses an information gathering power with respect to digital television services and we request that the Commission use this power to collect this important data.

Conclusion

28. The CMPA supports the renewal of the broadcasting licence for City Saskatchewan, subject to our above-noted requests related to the service's Canadian, educational, and independently-produced programming requirements. We request that the Commission impose the requested COLs to ensure City Saskatchewan's status as the province's educational broadcaster and home for quality educational programming for Saskatchewan's citizens.

29. We appreciate the opportunity to share our comments regarding the City Saskatchewan broadcasting licence renewal application in this proceeding. Should the Commission require any additional information regarding this intervention, please do not hesitate to contact me directly.

Sincerely,

[Filed electronically]

Kelsey McLaren
Director, Regulatory

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

***** END OF DOCUMENT *****

¹⁹ Broadcasting Order CRTC 2012-409, *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*.

