



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

June 13, 2008

Via Epass

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

**Re: Broadcasting Notice of Public Hearing CRTC 2008-6:
Application (No. 2008-0170-6) by Canadian Broadcasting Corporation (CBC)**

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. The CAB is pleased to submit these comments in response to the above-noted application by CBC for a licence to operate a national English-language Category 2 specialty television programming undertaking to be known as CBC SportsPlus.
3. The CAB opposes this application on the basis that licensing the proposed service would be contrary to the Commission's approach to licensing Category 2 specialty services.

Competitive with Existing Services

4. Pursuant to its licensing framework policy for new digital pay and specialty services¹, the Commission will not license a Category 2 service that is directly competitive with an existing pay or specialty service or a new Category 1 service. Notwithstanding CBC's statements to the contrary, its proposed SportsPlus service would be directly competitive with existing licensed analog sports specialty services.

¹ Public Notice CRTC 2000-6

5. CBC seeks to narrowly define the nature of its proposed sports service by stating that it will focus “primarily” on the coverage of Canadian athletes with “a particular emphasis” (amounting to 25%) on amateur athletes. The applicant also stated, however, that approximately 30% of its programming could be devoted to major sports like baseball, basketball, football, tennis, golf or hockey, and it refused to accept a condition of licence limiting the amount of professional sports it would broadcast. In this respect, it stated that, “[i]f there were Canadian athletes in the types of sport noted above we would carry those kind [sic] of sporting events.”
6. The CAB submits that nothing in CBC’s description of its proposed service would limit in any meaningful way its scope or the competitive threat it would pose to the existing licensed analog sports services. For example, as regards CBC’s suggestion that the breadth and competitive impact of the SportsPlus programming would be constrained by the service’s proposed focus on the coverage of Canadian athletes, the CAB notes that there are Canadian athletes competing in all the major sports leagues already covered by the existing analog sports specialty services:
 - Every NHL team has Canadian players (it’s possible in fact that *every* professional hockey team in North America, minor leagues included, has at least one Canadian player);
 - Every CFL team is required to meet a league-imposed quota of Canadian football players;
 - There are Canadians playing for Major League Baseball teams and for NBA teams; and
 - Most major golf and tennis tournaments include at least one Canadian participant.
7. Moreover, the Sports Plus proposed nature of service does not preclude the service from focusing a large portion of its programming on foreign athletes², and 75% of its programming could be professional sports, almost half of which would be devoted to the six major sports noted above.

As a result, the SportsPlus service could easily offer competitive coverage of these and other sports teams and events under the guise of “primarily covering Canadian athletes”.
8. In its application, CBC argues that its proposed SportsPlus service would not be directly competitive with TSN because TSN is dedicated to all aspects of sports while SportsPlus would be primarily dedicated to the coverage and profiling of Canadian athletes. Given the participation by Canadians in most if not all sports as outlined above, however, this “Canadian athletes angle” amounts to a distinction without a practical difference.
9. CBC tries to distinguish its proposed service from that of SportsNet simply on the basis that SportsPlus would be a national sports service (i.e. like TSN and The Score) rather than a regional one. This is a very thin argument and is insufficient as a basis to distinguish the type of programming which SportsPlus would offer from that offered by SportsNet.

² CBC has not defined what it means by focusing its programming “primarily” on Canadian athletes: this could simply be 50% +1.

10. Finally, CBC tries to argue that SportsPlus would not compete with The Score because the former would not be a news and information service with a focus on sports. This ignores the fact that The Score has been authorized since 2000³ to show some live sports (including Canadian collegiate sports primarily involving Canadian amateur athletes) and that SportsPlus also proposes to offer sports news reporting and sports information.

Conclusion

11. The CAB submits that CBC has failed to demonstrate, as required, that its proposed sports service would not be competitive with existing licensed services. For this reason, we submit that licensing the proposed service would be contrary to long-standing Commission policy. Accordingly, the CAB submits that the CBC SportsPlus applications should be denied.

Sincerely,

Original signed by

Jay Thomson
Vice-President, Regulatory and Policy

c.c. Canadian Broadcasting Corporation (Email: regulatoryaffairs@cbc.ca)

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³ Decision CRTC 2000-85.