



August 2, 2007

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

On-line: <http://support.crtc.gc.ca>

Dear Mr. Morin,

Broadcasting Notice of Public Hearing CRTC 2007-9

Rogers Media Inc. (Rogers Media) application to acquire CITY-TV Toronto, CKAL-TV Calgary, CKEM-TV Edmonton, CHMI-TV Portage La Prairie and CKVU-TV Vancouver Application No. 2007-0925-6

Introduction

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of Public Notice CRTC 2007-9, the application by Rogers Media to acquire the five CityTV television stations. ACTRA requests an opportunity to appear at the public hearings to expand on its observations.
2. ACTRA does not support this application as Rogers has not clearly committed tangible benefits in its Allan Waters Canadian Content Initiative to the production of 10 point Canadian drama programs.
3. ACTRA is pleased to have this opportunity to participate in this process and will bring to it the particular perspective of English-language performers. We believe it is essential to ensure:
 - i) That Canadian creative resources are predominantly used on the public airwaves; and
 - ii) That there is a reasonable supply of high quality English-language drama programs and series in every medium.
4. ACTRA and its predecessor organizations have represented the interests of professional performers working in the English-language media in every region of Canada for over 60 years. ACTRA's principal function is bargaining collectively on behalf of our more than 21,000 members and others, whose performances in movies, television programs, sound recordings and digital media entertain, educate and inform Canadians and global audiences.

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5. ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities are more abundant. ACTRA members also believe passionately that Canada needs a strong Canadian presence wherever entertainment and information services are created and however these are provided to Canadians. We believe in the creativity of Canadians; in our capability to tell and perform our own stories. We also believe that a healthy democracy needs diversity in programming choices and editorial opinions. It is these beliefs that motivate ACTRA's participation in the CRTC public process.

Continuing Crisis in Canadian English-language Drama

6. For the past seven years, ACTRA and its members have been leaders in the campaign to reverse the precipitous decline in the availability of domestically produced English-language television drama. We have raised this issue publicly, with politicians and with the Commission. For many more years, we have worked to increase the number, budget and quality of English-language Canadian feature films. We believe that strong actions must be taken in both fields and the current application provides opportunities.
7. The Commission has on numerous occasions acknowledged the crucial role that dramatic programs play in our broadcasting system, and in our lives. In Public Notice CRTC 2003-54 it was expressed in this way: "it is through television drama that most Canadians participate in their national culture and share in the evolution of social values and stories of human passion. Canadian drama should be a cornerstone of the Canadian broadcasting system." In Public Notice CRTC 2004-32, the Commission added the following observation: "It is the Commission's preliminary view that effective measures to increase the availability of, and viewing to, Canadian drama programs are needed at this time and that such measures would further the objectives of the *Broadcasting Act*." The CRTC has introduced incentives to try to encourage more drama production, but these have proven inadequate to reverse the decline in Canadian English language drama programming and with the Commission's decision to deregulate advertising on conventional networks the incentives are effectively unusable.
8. Drama remains the most popular form of programming on conventional television. the BBM reported for 2002 BBM Fall data, that prime time viewing of all drama on private, conventional English-language television stations represented 70% of all viewing. However, audiences for English-language Canadian drama are very low. Only 5% of all viewing of drama on English-language private conventional television stations was spent watching Canadian drama programs (CRTC 2004-3). This is largely due to the lack of Canadian drama programming on Canadian television networks.
9. After reaching a peak of \$1.11 billion in 1999/2000, the volume of production of English-language fiction programs (drama and scripted comedy) declined to only \$713 million in 2002/03. It has since risen to \$861 million in 2005/06, still more than 20% lower than the peak year in 1998 (Profile 2007).
10. Producing high quality drama programs requires more creative, technical and financial resources than any other programming genre. Drama production trains, develops and employs Canadian writers, actors, directors, editors, technicians and other key creative individuals. It is also by far the most expensive genre of programming.
11. There are a number of reasons for the decline including the shift to inexpensive reality-based television programs, the CRTC 1999 Television Policy which de-emphasized drama, the collapse of the foreign television market for Canadian producers and the uncertainty of government (and cable company) funding support, particularly through the Canadian Television Fund (CTF).

12. But the core reason for the current state of drama production is the woefully inadequate support provided by Canada's private conventional broadcasters, and this development has been aided and abetted by the CRTC's reluctance to put into place effective regulatory measures that will ensure Canadian English-language drama programming is available to Canadians.
13. A 2004 study, *Through the Looking Glass*, confirms that Canada's broadcast license fees paid by Canada's private broadcasters are substantially lower than those in other countries. The study, commissioned by the Directors' Guild of Canada, the CRTC and several government departments reports that domestic license fees in the United States cover on average 81% of the costs of a television production, in the United Kingdom they can cover between 70% and 115%, while in Australia, they can cover between 35% and 85%. License fees in French Canada cover an average of 38%.
14. In English-Canada the broadcast license fees paid by broadcasters are among the lowest in the world and are as low as only 18.4% of the costs of a television production. Thus, the producer must look to other markets and public sources for close to 82% of the financing. While the 2004 study was based on earlier data, we expect the situation has not changed in the intervening years.
15. On 28 March 2007, the CRTC reported on the financial performance of television broadcasters for 2006. The results show that broadcasters decreased their spending on home grown drama and increased their spending on foreign drama. In total, Canadian broadcasters spent more than \$685 million acquiring foreign programs in 2006, up 12.2% from the previous year. Of this amount, more than \$478 million was spent on foreign drama, an increase of 19.2% from the previous year. In the same year, Canadian broadcasters spent only \$618 million on all of their Canadian programs and just under \$71 million on Canadian drama. Spending on home grown drama dropped by 13.7% from the previous year. This state of affairs begs for the CRTC to restore balance to the broadcasting system in respect of priority programming by exercising its regulatory power to put in place effective measures for Canadian drama programming expenditures and scheduling requirements to ensure Canadians have access to Canadian drama programming.
16. ACTRA is concerned about the present state and future of Canadian drama programs in television and other media. We are concerned about the level of investment; the on-air placement; the lack of adequate promotion; and the type of Canadian dramatic programs being made. In our recent submission to the CRTC concerning Diversity of Voices, ACTRA urged that when the Commission evaluates the impact of ownership transactions as follows:

The key criterion should be the degree to which the ownership transaction will bring more Canadian programming choices and increase the supply of high quality Canadian drama. There are other elements which are important, such as maintaining a local and regional presence, promotion of the editorial diversity and protection of employment and jobs, but the foremost consideration should be a commitment to Canadian drama.
17. Thus, ACTRA will respond to the proposal by Rogers Media to acquire the CityTV stations in Vancouver, Edmonton, Calgary and Winnipeg (Portage La Prairie) and Toronto primarily by assessing whether or not the transaction will increase the production and scheduling of Canadian drama.

ANALYSIS OF APPLICATION

Concentration of Ownership/Vertical Integration

18. As we stated in our intervention in the application of CTVgm to acquire CHUM and more recently in our Diversity of Voices submission, ACTRA supports the CRTC policy which generally permits only one station per owner, per market. This policy permits exceptions only in very limited and specific circumstances, including where there are concerns about the financial viability of the undertaking in question or where the exception will ensure editorial diversity.
19. ACTRA was thus pleased that the Commission, in its recent decision required CTVgm to divest ownership of the CityTV group of stations since there was no reason for an exception, a position that ACTRA put forward to the Commission in our written and oral submission during that process. We note that the application of Rogers Media to acquire those CityTV stations raises similar issues.
20. Rogers Media presently holds six licences for the OMNI television group of stations. It has proposed to divest its interest in the stations in Vancouver and Winnipeg and to retain its licences in Toronto (two), Calgary and Edmonton. Its rationale for this decision is that, since the stations in Vancouver and Winnipeg broadcast in the English-language, it would be in violation of the common ownership policy. Since the other OMNI stations serve a range of diverse communities in those cities and provide a majority of their programs in languages other than English, Rogers Media suggests that continued ownership of these licences would be consistent with the policy. While we have some reservations noted below, ACTRA accepts that the continued ownership of the OMNI stations in Toronto, Calgary and Edmonton would be consistent with the policy, since diversity of content will be served by such a determination.
21. The first concern we have is that, while Rogers Media downplays the extent and influence of U.S. shows broadcast on its OMNI stations, ACTRA fails to see how the scheduling of NFL football, the David Letterman show and re-runs of popular U.S. syndicated comedies and dramas, adds diversity to the Canadian broadcasting system and serves the ethnic audiences that are the primary target of the stations. However, this is a matter best addressed when the stations' licences are renewed. We object to increases in foreign drama programming that would dilute the distinctive Canadian flavor of the City TV stations.
22. ACTRA also notes that CityTV stations also schedule some programs in languages other than English. If the exemption from the common ownership policy is being made on the basis of diversity, ACTRA believes it would be appropriate to establish a condition of licence that would preclude the CityTV and OMNI station in each market from using the same programs, as proposed by Rogers Media.
23. With the acquisition of the CityTV stations, Rogers Media, already one of Canada's largest communications companies, has expanded its diverse holdings, which also include assets in cable television, radio, the Internet and new media, wireless and publishing. This raises virtually all of the issues concerning cross-media ownership, and vertical and horizontal integration, that are being canvassed in the Diversity of Voices public notice and upcoming hearing. In that process, ACTRA has urged the Commission to take steps to limit media concentration and, where it is permitted, to ensure through conditions of licence and other mechanisms that its effects on the system are positive. We would anticipate that, as the CRTC implements such steps and develops regulatory mechanisms, these will be applied to Rogers Media.

24. With respect to editorial diversity, ACTRA commends the clear language of paragraph 79 in the Supplementary Brief which commits Rogers Media to adhere to the *Statement of Principles and Practices* respecting, among other things, independent management of news departments and maintenance of separate presentation structures. The paragraph states that, with respect to CityTV and OMNI, “we see distinct editorial mandates for each station.”
25. ACTRA wonders therefore about the obtuse language of paragraph 80 which discusses “a number of editorial initiatives” and “touchpoints” that “ensure the input and participation from different editorial perspectives” and lead to a “product”, “which can then be customized for individual media purposes.” We seek clarification that this is not merely a way of saying that Rogers Media is developing a common editorial policy that would apply across all of its diverse media and publishing holdings.

CityTV Programming

26. Like most others in Canadian television, ACTRA celebrates the legacy of all those responsible for creating and developing CHUM and CityTV. Both in radio and television, these stations have provided innovative and leading-edge programming to the Canadian system; continue to contribute to the production of Canadian content in music, film and television; are responsive to the needs and interests of diverse communities; and regularly promote Canadian artists.
27. ACTRA is thus pleased that Rogers Media is committed to reinvigorating the CityTV brand and to making the long-term financial investments necessary to return the stations to a leading role in the system. We even hope that with the necessary stewardship and financial investment, these stations can provide a foundation to develop a third English-language private television network in Canada, to compete with CTV and CanWest Global. ACTRA believes that such increased competition, combined with appropriate regulatory requirements relating to English-language drama programs and series, would be extremely beneficial for the Canadian broadcasting system, the program production industry and Canadian viewers.
28. In this respect, ACTRA particularly notes the commitments of Rogers Media to “producing and acquiring the very best in Canadian programming, in all categories, but especially in news and information, drama, documentaries, and lifestyle programming” and to increase investment in Canadian program production and further develop relationships with Canadian independent producers.
29. With respect to feature films, the CityTV stations currently broadcast virtually every available Canadian feature film produced. This provides an extremely valuable exhibition window to expose the films to Canadians and important license fees for the producers. Two of the stations are required by condition of licence to broadcast a minimum of 100 hours per year of Canadian long-form features. In its application, Rogers Media has made it clear that it will continue this commitment. Since ACTRA has long advocated that television has an important role to play in scheduling and promoting Canadian feature films, this commitment is welcomed.
30. However, ACTRA would oppose the Rogers Media request to increase to 20 hours the current condition of licence which limits CityTV stations to broadcasting no more than 10 hours per year of documentary films, since this would seem to reduce the precious hours available for Canadian fiction works such as 10 point dramas and scripted comedies.
31. ACTRA is also pleased with the proposal of Rogers Media to increase the commitment of CityTV Toronto to the same eight hours of priority programming as the other CityTV stations. ACTRA believes this is an important and substantive commitment which the CRTC should

accept, and we urge the CRTC furthermore to require Rogers Media to fill the additional hour with drama programming.

Tangible Benefits

32. ACTRA notes with satisfaction that Rogers Media has proposed to provide a benefits package in the amount of \$37.5 million, which represents 10% of the \$375 million negotiated purchase price for the CityTV stations. We are relieved that there is no proposal to reduce this package by the value of any debt acquired or by the value of the existing assets which Rogers Media has proposed to divest as part of the application. Furthermore, we note that Rogers Media acknowledges that it must fulfill the remaining benefits payments from both the CKVU-TV and Craig Media acquisitions by CHUM.
33. ACTRA urges the CRTC to adopt this approach to calculating the appropriate level of benefits as the standard for all future acquisitions.
34. ACTRA is concerned however that Rogers has not provided a timetable for the payment of tangible benefits. We believe that such a timetable should include commitments to spend the benefits that Rogers will pay in respect of the CKVU-TV and Craig Media acquisitions by CHUM which it will be inheriting in this acquisition. This is a concern as we believe that the Commission must ensure that these funds are expended in a manner that will benefit the broadcasting system and that is reasonable and predictable.
35. In our recent submission to the CRTC concerning Diversity of Voices, ACTRA urged the Commission to signal that it will require future benefits packages to concentrate on drama productions, with a minimum of 2/3 of the package being allocated for such productions. The current application by Rogers Media provides an opportunity for the CRTC to act on this proposal.
36. Rogers Media proposes to create the *Allan Waters Canadian Content Initiative* with \$32.5 million of the benefits. It further proposes that 75% of this funding would be allocated to the production of Canadian priority programs. ACTRA urges that the Commission require that this allocation, \$24.4 million or 65.1% of the total benefits package, be devoted to the production of 10 point television dramas and series. Since some of the resources allocated for script and concept development will be spent on such dramas, this funding target is realizable and should be confirmed by the Commission.
37. The Commission should require Rogers to map out its commitments in detail in a grid as the Commission has in Broadcasting decision CRTC 2000-747 in regard to the BCE acquisition of CTV and in Broadcasting Decision 2004-502 in respect of the Chum acquisition of Craig Media. While Rogers has made a commitment to “high quality” Canadian programming and has committed 75% of the \$32.5 million initiative to the production of Canadian priority programming there is no expressed commitment to the production of 10 point drama programming. ACTRA cannot support the Rogers application without clarity of its commitment to the production of 10 point Canadian dramas.
38. ACTRA does not oppose other proposals put forward by Rogers Media, including that 75% of the *Allan Waters Canadian Content Initiative* will be allocated for Canadian independent producers and that some portion will support selected and complementary new media initiatives.
39. ACTRA understands that a good drama requires a good script and there is far too little spent in Canada developing projects. Consequently, we are pleased to see the proposal of Rogers

Media to allocate a portion of the benefits to script and concept development. We believe strongly that script development funding should be available to professional writers, performers and directors (who must already have a successful track record to qualify), regardless of whether there is a producer attached to the script. Since creative decisions are made about the awarding of such funding and there is likely to be a competitive process involved, there should be no serious objection to opening up the criteria in this way.

40. Finally, while we support the Industry Initiatives proposed by Rogers Media, we look forward to the Commission satisfying itself in each case that the proposed funding is incremental and would not be made otherwise.
41. We thank the Commission for this opportunity to provide our comments and we are pleased to have an opportunity to appear at a public hearing before the Commission to expand on our concerns and proposals and to reply to any questions.

All of which is respectfully submitted.



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ACTRA

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