



Broadcasting Decision CRTC 2005-4

Ottawa, 12 January 2005

**Global Television Network Inc. and Fox Sports World Canada Holdco Inc.,
partners in a general partnership carrying on business as Fox Sports
World Canada Partnership**
Across Canada

Application 2004-0077-1

Broadcasting Public Notice CRTC 2004-28

30 April 2004

Fox Sports World Canada – Licence amendment

*The Commission **approves** the application by Global Television Network Inc. and Fox Sports World Canada Holdco Inc., partners in a general partnership carrying on business as Fox Sports World Canada Partnership, to amend the licence of the national Category 2 specialty programming undertaking Fox Sports World Canada by replacing the licensee's current condition of licence defining its nature of service.*

The application

1. The Commission received an application by Global Television Network Inc. and Fox Sports World Canada Holdco Inc., partners in a general partnership carrying on business as Fox Sports World Canada Partnership (Fox), to amend the broadcasting licence for the national English-language Category 2 specialty programming undertaking known as Fox Sports World Canada (Fox Sports). The licensee proposed to amend the condition of licence defining its nature of service. Under the proposed amendment, the service would be devoted primarily to the coverage of cricket, rugby and soccer; the licensee would be permitted to devote no more than 25% of all programming broadcast during the broadcast year to sports other than cricket, rugby and soccer. The amendment would stipulate that the licensee may not dedicate any coverage to the following North American men's sports: ice hockey, basketball, baseball and North American-style football. Furthermore, with the exception of cricket, rugby and soccer, no more than 5% of the broadcast year would be dedicated to the live coverage of any one particular sport.
2. Under the current condition of licence, the licensee's nature of service is restricted exclusively to the coverage of cricket, rugby and soccer. The licensee noted that the seasonal nature of the sports it is permitted to broadcast makes it difficult to offer attractive year-round service to its viewers.

The interventions

3. The Commission received seven interventions: two in support of the application, four in opposition and one expressing general comments with respect to rugby programming on television. The opposing interventions were from The Score Television Network Ltd. (The Score Network), licensee of the national English-language specialty programming undertaking known as The Score; Rogers Sportsnet Inc. (Rogers), licensee of the national, English-language specialty programming undertaking, SportsNet; CTV Specialty Television Inc. (CTV), which owns and controls the national, English-language specialty programming undertaking known as The Sports Network (TSN); and Mr. Philip Stiff.
4. In their interventions, The Score Network, Rogers and CTV all expressed concern that the proposed amendment represented a fundamental change in Fox Sports' nature of service that would lead to its changing from a niche sports service to a general sports service. According to these interveners, Fox Sports would consequently compete directly with the existing general sports specialty services, namely The Score, SportsNet and TSN, which CTV noted would counter the Commission's longstanding one-per-genre policy as set out in *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6).
5. Rogers and CTV expressed concern that the proposed 25% ceiling on sports programming other than cricket, rugby and soccer would allow considerable programming flexibility to Fox Sports. Rogers noted that, under the proposed amendment, Fox Sports could devote a quarter of its programming schedule to one sport. CTV stated that Fox Sports could broadcast the entire 25% of alternative sports programming in a short period, given that there is no requirement to divide this programming evenly over the broadcast year. Furthermore, both interveners were of the view that the 5% ceiling on live coverage would do little to prevent Fox Sports from becoming directly competitive with the existing general sports specialty services. Rogers noted that, if Fox Sports combined the 25% and 5% ceilings, it could fill the 7 p.m. to 11:30 p.m. viewing period every night with live coverage of sports other than cricket, rugby and soccer. Rogers suggested that, in order to minimize the potential for direct competition with the existing general sports specialty services, the Commission should allow Fox to devote no more than 10%, rather than the proposed 25%, of all programming broadcast during the broadcast year to sports other than cricket, rugby and soccer.
6. For his part, Mr. Philip Stiff stated that Fox Sports already broadcasts too few games from the tournaments and leagues it tries to cover. He added that the service should strive to be more "complete and comprehensive" with the sports it is already licensed to broadcast.

7. Rogers alleged that Fox was overstating the impact of the summer season on its subscriber and advertising revenues. The Score Network and CTV stated that most services experience a loss in their subscriber base over the summer season. They argued that, in fact, Fox Sports has a high subscriber base. The Score Network added that, when compared to other Category 2 services, Fox Sports did better than average in holding onto its viewers in the summer months.
8. Furthermore, The Score Network and CTV were of the view that Fox's request was premature. In particular, CTV stated that the licensee's request was "extraordinary" given that the amendment would change the service's fundamental nature of service within the first three years of operation, and that the licensee presented no evidence of a material change in its circumstances to justify the proposed amendment. CTV noted that, in the past, the Commission has approved applications for amendments to the nature of service of other specialty programming undertakings, but it has simultaneously imposed conditions of licence to ensure that the basic nature of service would not change.
9. With respect to the licensee's proposal to exclude certain sports from its programming as part of its amended condition of licence, Rogers suggested that, if the application were to be approved, the amended condition of licence should instead list the sports that are included in Fox Sports' nature of service just as the current nature of service does.
10. As an alternative, Rogers recommended that the list of excluded sports submitted by the licensee be expanded. Rogers argued that Fox's proposal to exclude North American men's ice hockey, basketball, baseball and North American-style football from Fox Sports' programming should not be limited to North American professional leagues, but should encompass all levels of these sports, including international tournaments and events. Rogers added that lacrosse should be excluded from Fox Sports' programming given SportsNet's commitment to the sport. In addition, according to Rogers, winter sports like figure skating, curling, skiing and snowboarding should be excluded because they do not fit into Fox Sports' programming focus. Finally, Rogers stated that golf, car racing and tennis should be excluded from Fox Sports' programming given that the appeal of such sports is not limited to a primarily international audience. As an exception, however, Fox Sports could broadcast golf, car racing and tennis programming from international circuits.
11. CTV expressed similar concerns. It noted that most of the sports mentioned in Fox's application are carried by one of the existing sports specialty services. It also expressed concern over the possible impact that the proposed change to the Fox Sports licence could have on its Category 1 specialty service, WTSN.

The licensee's reply

12. In response to the interventions, Fox argued that its application did not propose a fundamental change to Fox Sports' nature of service and denied that Fox Sports would become a general sports specialty service were its application approved. Fox submitted that its "application seeks to improve the service – not dismantle it." It further stated that its intention is not to reduce the amount of quality cricket, rugby and soccer that the

service broadcasts, but to show fewer repeats off-season. Fox pointed out that, in its original application, it did not request any changes to the categories and subcategories from which the service can draw programming, nor did it request to carry “the cornerstones of Canadian sports broadcasting,” that is, North American men’s ice hockey, basketball, baseball or North American-style football. According to Fox, a general sports specialty service would necessarily broadcast these four sports.

13. In response to interventions suggesting that Fox Sports should only broadcast cricket, rugby and soccer programming, the licensee stated that programming rights and reception cost considerations can make it difficult to broadcast only cricket, rugby and soccer throughout the entire year. It added that there is not an unlimited supply of high quality programming within those sports available for broadcast year-round.
14. Fox also disagreed with Rogers’ suggestion that Fox Sports should not be permitted to broadcast lacrosse programming. Fox submitted that lacrosse was not equal to the other four major men’s sports, noting that SportsNet had broadcast far fewer lacrosse games in the last year than it had men’s ice hockey, basketball, baseball and North American-style football.
15. Similarly, with respect to CTV’s concern over the impact that the proposed amendment could have on WTSN, the licensee argued that CTV gave up its right to object to the carriage of women’s sports by other specialty programming undertakings when it stopped broadcasting on WTSN. Moreover, the licensee was of the view that it would be “entirely appropriate” for Fox Sports, a complementary Category 2 service, to broadcast women’s sports.
16. In response to the contention by The Score Network and CTV that Fox’s request was premature, Fox noted that other Category 2 services have applied for licence amendments in their first licence terms. It pointed out that the Commission approved an application by The Score Network to amend its licence less than four years after it had obtained its original licence.¹ The licensee noted that CTV and Rogers have also been granted licence amendments to their Category 2 services, some in the first term.
17. Nevertheless, to address the concerns expressed by the interveners and so as not to offend the Commission’s one-per-genre policy, Fox proposed to amend its request by reducing, from 25% to 10% of the broadcast year, the amount of programming it wishes to devote to sports other than cricket, rugby and soccer. It further amended its request by agreeing not to dedicate any coverage to the following men’s sports: ice hockey, basketball, baseball and North American-style football.

¹ See Decision CRTC 2000-85, 24 March 2000.

The Commission's analysis and determination

18. In Public Notice 2000-6, the Commission stated that although it will license Category 2 services that are competitive with each other, it will not license a Category 2 service that is directly competitive with an existing pay or specialty service or with a new Category 1 service.
19. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an existing pay, specialty or Category 1 service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question.
20. The Commission considers that the licensee's amended proposal to devote no more than 10% of all programming broadcast during the broadcast year to sports other than cricket, rugby and soccer is a more acceptable refinement to Fox Sports' nature of service than the original proposal of 25%. While the amendment of 10% allows the licensee some programming flexibility when it is needed, the Commission is of the view that, under such an amendment, Fox Sports would continue to be a niche sports specialty service and would not compete directly with existing analog pay or specialty services or with Category 1 services such as The Score, SportsNet and TSN.
21. The Commission also considers it appropriate to impose the requirements that no more than 5% of the broadcast year will be dedicated to live coverage of any one particular sport with the exception of cricket, rugby and soccer, and that the licensee shall not dedicate any coverage to the following men's sports: ice hockey, basketball, baseball and North American-style football. The Commission is of the view that these additional requirements, combined with the 10% proposed amendment, are not sufficient to cause Fox Sports to become directly competitive with existing analog pay or specialty services or with Category 1 services such as The Score, SportsNet and TSN.
22. In light of the above, the Commission **approves** the application by Global Television Network Inc. and Fox Sports World Canada Holdco Inc., partners in a general partnership carrying on business as Fox Sports World Canada Partnership, to amend the broadcasting licence for the Category 2 specialty programming undertaking Fox Sports World Canada. The Commission therefore replaces the licensee's condition of licence defining its nature of service with the following **condition of licence**:

The licensee shall provide a national, English-language Category 2 specialty service devoted primarily to the coverage of cricket, rugby and soccer. No more than 10% of all programming broadcast during the broadcast year shall be dedicated to sports other than cricket, rugby and soccer. With the exception of

cricket, rugby and soccer, no more than 5% of the broadcast year shall be dedicated to the live coverage of any one particular sport. The licensee shall not dedicate any coverage to the following men's sports: ice hockey, basketball, baseball and North American-style football.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>