



Conseil de la radiodiffusion et des
télécommunications canadiennes

Canadian Radio-television and
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Dear Mr. Murdoch,

Re: Complaint by the Communications, Energy and Paperworkers Union of Canada (CEP) regarding CanWest MediaWorks Inc. (CanWest) – Broadcast Centres

This is in response to your complaint dated 9 November 2007, to CanWest's reply dated 12 December 2007, and to your subsequent letter dated 9 January 2008 regarding alleged contraventions of terms and conditions of CanWest's licences.

In particular, you submit that by removing production responsibility from its local stations to four Broadcast Centres, CanWest is now or will be in breach of the terms and conditions of its licences (COLs), the CRTC's regulations, and the Commission's local advertising policy.

You also request that the CRTC hold a public hearing at the earliest opportunity to consider CanWest's proposed actions, the contravention of the terms and conditions of its licences, and the Commission's decisions relating to those licences.

Analysis and Determinations

After reviewing your assertions and CanWest's response, the three primary issues to be considered in the evaluation of this complaint are as follows:

- Do CanWest's planned Broadcast Centres constitute a contravention of the terms and conditions of its licences and/or the Commission's local advertising policy.¹
- Is CanWest currently in contravention of its local programming requirements?

¹ Public Notice CRTC 1988-131

- Should the Commission hold a public hearing at the earliest possible date to consider these matters?

Do CanWest's planned Broadcast Centres constitute a contravention of the terms and conditions of its licences and/or the Commission's regulations and local advertising policy?

In your complaint you allege that, if CanWest shifts its local stations' program production to the Broadcast Centres, CanWest will contravene the terms and conditions of licence and/or the Commission's regulations and local advertising policy in the following ways:

- by moving the origination of the local news programs it will be in breach of its conditions of licence for CHEK-TV, CHCA-TV and CHCH-TV and commitments for its other stations;
- by transferring programming responsibilities and production capacity, local stations will be effectively operating as rebroadcasting transmitters;
- by yielding control of the stations' program schedules to Broadcast Centres that are not licensed as network operators;
- by redistributing a programming service from third-party Broadcast Centres without alteration, CanWest's stations will be acting as unlicensed broadcasting distribution undertakings;
- by allowing CanWest to collect local advertising revenue when it has reduced its stations' ability to present local programming.

In its reply, CanWest states that these allegations are incorrect because the control and responsibility of the broadcast will remain at the local station.

CanWest submits that its local television stations have not only abided by its commitments and conditions of licence in every year of the licence term, but have exceeded its obligations as they relate to local programming and news exhibition in most markets, and will continue to fulfil its regulatory obligations following implementation of the Digital News Project.

CanWest states that the recent decision to move some production elements (e.g., camerawork; lighting; microphone levels; virtual set generators; physical assemblage of news run-downs) to four Broadcast Centres in Vancouver, Calgary, Edmonton, and Toronto does not in any way abrogate its individual licences or take decision-making capabilities away from the local stations.

CanWest further submits that while the Broadcast Centres will control technical production support, all material decisions regarding the content and presentation of the newscast (with the exception of set design) will continue to occur at the local level, as will the local newsgathering element.

Based on the description in the press release and the Internal CanWest question & answer document provided as attachments to your complaint, it would appear that the control will remain with the stations and that only technical aspects of the broadcast will be run out of the Broadcast Centres. However, given that CanWest's plans only call for the implementation of the first Broadcast Centre in the spring of 2008, it is difficult to make a determination on the complaint, either confirming CEP's allegations or supporting CanWest's assertions, until such time as the Broadcast Centres are actually in operation.

In the absence of such evidence to support CEP's allegations, I am unable to conclude that CanWest's plan will put it in contravention of the terms and conditions of its licences, the Commission's regulations and/or the local advertising policy.

Is CanWest currently in contravention of its local programming requirements?

With respect to your allegation that CanWest is now in breach of the terms and conditions of its licences in respect of local programming, in the 1999 Television Policy² the Commission removed quantitative obligations on local programming, eliminating local news requirements for private conventional TV stations, and concluded there are sufficient market incentives to ensure that audiences would continue to receive a variety of local news sources without regulatory requirements.

In accordance with this policy, the majority of CanWest's stations only have commitments for local programming that have been noted in renewal decisions, with no legal requirement that they be fulfilled. On an exceptional basis, of the stations affected by the Broadcasting Centres, CHEK-TV Victoria and CHCH-TV Hamilton, have conditions of licence for a minimum number of hours of local programming³. CHCA-TV Red Deer also has a condition of licence to ensure that 75% of its local programming is local Red Deer programming⁴ but no COL requiring a minimum number of hours of local programming.

With respect to the COLs requiring a minimum number of hours of local programming, Commission staff conducted a review of CanWest's programming logs for the 2006-2007 broadcast year, which CanWest is required to file with the Commission pursuant to section 10(3) of the Television Regulations. This review confirms that CHEK-TV and CHCH-TV exceeded the

² Public Notice 1999-97

³ CHEK-TV Decision CRTC 2001-458-14 and CHCH-TV Decision CRTC 2001-458-4

⁴ CHCA-TV Decision CRTC 2007-168

minimum required hours of local programming as set out in their respective conditions of licence. Accordingly, there is no evidence that CanWest is currently in contravention of its obligations to broadcast a minimum number of hours of local programming on these stations.

It is also noted that the programming logs indicate that virtually all of CanWest's other stations are fulfilling and/or exceeding their local programming commitments. Only one station, CIHF-TV Halifax, indicated a slight shortfall in fulfilling its local programming commitments for the 2006-07 broadcast year.

Should the Commission hold a public hearing at the earliest possible date to consider these matters?

In the 1999 Television Policy, the Commission stated that all licensees will be required to demonstrate at licence renewal time how they are meeting the demands and reflecting the particular concerns of their local audiences. Should the Commission determine that licensees have failed to respond to legitimate community needs, it will take appropriate action at that time, such as imposing specific minimum requirements by conditions of licence.

Given there is no evidence that CanWest is currently in contravention of its local programming requirements at this time, there is no reason to examine this licensee's local programming performance prior to its licence renewals, which are scheduled for 2009. Any shortfalls in commitments or COLs can be discussed at that time.

With regard to CanWest's Broadcast Centres, given that the project will only start to be implemented in Spring 2008, the Commission will examine this issue more closely, if necessary, at the licence renewals in 2009, as the Broadcast Centres will be in operation by then and a full assessment of their impact can be made.

Yours sincerely,



Michel Arpin
Vice Chairmain,
Broadcasting

cc: Charlotte Bell, Vice-President, Regulatory Affairs, CanWest
MediaWorks Inc.