Broadcast Decision CRTC 2008-129

Ottawa, 26 June 2008

TQS inc.
Montréal, Québec, Trois-Rivières, Sherbrooke and Saguenay, Quebec

Application numbers 2008-0594-7, 2008-0595-5, 2008-0596-3, 2008-0597-1, 2008-0599-7, 2008-0600-5, 2008-0601-0 and 2008-0604-4, received 24 April 2008
Public Hearing held in Montréal, Québec and the National Capital Region
2, 3, 4 and 12 June 2008

Change in the effective control of TQS inc. and licence renewals of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke, CFRS-TV Saguenay and of the TQS network

In this decision, the Commission ***approves*** *the application to change the effective control of TQS inc. (TQS), licensee of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke and CFRS-TV Saguenay, and of the TQS network, through the transfer of all of the issued and outstanding shares of 3947424 Canada Inc., the parent corporation of TQS, currently held by Cogeco Radio-Télévision inc. (60%) and CTV Television Inc. (40%), to Remstar Diffusion inc., a corporation owned and controlled by Julien and Maxime Rémillard.*

The Commission further ***renews*** *the broadcasting licences for the above-mentioned stations from 1 September 2008 to 31 August 2015. The licences will be subject to the* ***conditions*** *set out in the appendices to this decision.*

In light of the licensee's technical bankruptcy situation, the Commission accepts the applicant's proposal regarding local programming and category 1 news programming for the stations in Montréal and Québec. Accordingly, the licensee must broadcast no less than 15 hours of local programming each week in Montréal, of which a minimum of 2 hours will be devoted to category 1 news programming, and no less than 10 hours of local programming each week in Québec, of which a minimum of 2 hours will be devoted to category 1 news programming.

With respect to the stations in Saguenay, Sherbrooke and Trois-Rivières, the licensee must broadcast no less than 1 hour and 30 minutes of local programming each week, of which a minimum of 1 hour will be devoted to category 1 news programming.

In addition, the licensee will be required to broadcast on each of its stations and on the entire TQS network a minimum of 30 minutes of category 1 news programming every Saturday and Sunday.

Moreover, given the specific context of these renewals and given that these measures reflect an exception granted to TQS in light of its technical bankruptcy, the Commission intends to re-examine the TQS news broadcasting issue in a public hearing to be held in the spring of 2011 that will coincide with the conversion of its analog licences to digital licences.

The Commissions requires, as a ***condition of approval****, that the applicant file revised programming schedules within 30 days of the date of this decision.*

In addition to the summary of financial data that it files with its annual report, TQS will be required to file a report containing the operating revenues or losses stemming from the local news offering. This report will include network expenditures pro-rated to allocate to each station its share of the network expenditures that are usually allocated in their entirety to the Montréal station in the annual report filed with the Commission. It must also include national network advertising revenues pro-rated to allocate to each station its share of national network advertising revenues. This additional report must accompany the TQS annual report and must be filed in the same format as the table submitted by TQS at the 12 June hearing in the National Capital Region for each of the first three years.

Moreover, the Commission also intends to re-examine the matter of the broadcast by TQS of Canadian priority programs when it re-examines the matter of the broadcast of category 1 news programming at the public hearing to be held in the spring of 2011.

Finally, the Commission notes that the exceptions to its policies granted to this licensee represent a temporary measure justified by the technical bankruptcy of TQS and the continuation of its operations under the protection of the Companies' Creditors Arrangement Act *and that such exceptions will not apply to the other over-the-air television undertakings unless they find themselves in the same situation.*

A dissenting opinion by Commissioner Michel Morin is attached.

The application

1. The Commission received an application to change the effective control of TQS inc. (TQS), licensee of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke, CFRS-TV Saguenay and of the TQS network, through the transfer of all of the issued and outstanding shares of 3947424 Canada Inc., the parent corporation of TQS, currently held by Cogeco Radio-Télévision inc. (60%) and CTV Television Inc. (40%), to Remstar Diffusion inc. (Remstar), a corporation owned and controlled by Julien and Maxime Rémillard. The applicant also requested that the Commission renew the broadcasting licences for these undertakings until 2015.

2. The applicant clearly indicated that the application for the change in effective control was not severable from the licence renewal applications.

Background

3. Since 1990, TQS has been in a precarious financial situation. This undertaking has experienced operating losses and almost always negative profit before interest and taxes (PBIT) over more than half of its 18 years of broadcasting. The only three broadcast years during which TQS was profitable were the three years from 2002 to 2004. Despite very satisfactory ratings, TQS has never been able to generate revenues comparable to the revenues of its competitors, which has lead to constant financial difficulties.

4. On 18 December 2007, a Quebec Superior Court Order was rendered granting TQS protection under the *Companies' Creditors Arrangement Act*, R. S. C. (1985), c. C-36.

5. On 20 March 2008, the Commission approved the application by TQS for authority to delegate temporary management of its undertaking and authorized Remstar Corporation to continue to operate the stations and the network until 20 September 2008. Remstar Corporation, a corporation also owned and controlled by Julien and Maxime Rémillard, is represented by Tony Porrello.

6. In its letter of authority, the Commission noted that the management agreement concluded between the parties would in no way affect the role of the sole administrator, Yves Mayrand. Further, the Commission noted that during this period, Remstar Corporation would be solely responsible for operating the undertaking and that if it were necessary to renew this authority, TQS would file the application at least one month before the expiry of the prescribed deadline.

7. On 22 May 2008, the TQS creditors agreed to the Plan of Arrangement filed by Remstar Corporation. The agreement between TQS and its creditors was approved by the Superior Court of Quebec on 4 June 2008.

8. In its licence renewal applications, TQS also filed applications to amend its current licences. These applications provided very few details regarding its programming strategy. The principal amendments proposed involved eliminating newscasts on all TQS stations and on the TQS network and a downward revision to its priority program requirements.

9. As part of this process, the Commission considered interventions with respect to each application. The public record for this proceeding is available by clicking on "Public Proceedings" on the Commission's website at www.crtc.gc.ca.

10. After considering the applications and interventions, the Commission is of the view that the following six issues should be considered:

- Remstar's financial capacity and the proposed tangible benefits;

- the TQS proposal to eliminate news programming;
- the TQS proposal with respect to priority programs and independent production;
- the TQS proposal with respect to Canadian content;
- the conversion to digital; and
- social issues.

Remstar’s financial capacity and the proposed tangible benefits

11. Generally, when the Commission approves an application to modify the effective control of a broadcasting undertaking, it ensures that the applicant has demonstrated that it has the financial capacity to implement the plan proposed in its application. In the present case, the Commission repeatedly requested that Remstar demonstrate its financial capacity. At the end of the hearing, the Commission required Remstar to file, by 16 June 2008, the financial statements of Remstar Corporation or of Julien and Maxime Rémillard, or unequivocal proof that the $20 million is in fact in equity and that the investment is free of any form of obligation.

12. On 16 June 2008, the Commission received a letter from external auditor Sofio Ouellet dated 13 June 2008 confirming that the $20 million is in fact in equity and that the investment is free of any form of obligation. The Commission also received the affidavits of Julien and Maxime Rémillard, both dated 16 June 2008, attesting that the $20 million investment is in fact in equity and that this investment is free of any form of obligation, and confirming that these funds would be devoted to the proposed investment in TQS and to the funding of TQS operations.

13. The Commission regrets that Remstar did not agree to file the financial statements of Julien and Maxime Rémillard or of Remstar Corporation. The Commission recognizes, however, that TQS has put itself under the protection of the *Companies’ Creditors Arrangement Act*, that at the hearing the controller declared himself satisfied with the Remstar offer to acquire TQS, and that the Court approved the transaction.

14. The Commission is of the view that the documents filed on 16 June 2008 by the applicant provide sufficient evidence for the Commission, in this particular case, of the financial capacity of Remstar and its shareholders to implement the plan proposed in the application.

Commission's determination with respect to effective control

15. Accordingly**,** the Commission **approves** the application to change the effective control of TQS inc., licensee of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke and CFRS-TV Saguenay, and of the TQS network, through the transfer of all of the issued and outstanding shares of 3947424 Canada Inc., the parent corporation of TQS, currently held by Cogeco Radio-Télévision inc. (60%) and CTV Television Inc. (40%) to Remstar Diffusion inc., a corporation owned and controlled by Julien and Maxime Rémillard.

16. The Commission set out its policy on tangible benefits in Public Notice 1999-97. In this case, since TQS has incurred deficits during the past three years and filed for protection under the *Companies' Creditors Arrangement Act*, Remstar sought an exemption from this requirement from the Commission.

17. The Commission notes the commitment by the applicant to contribute an amount of $1 million as tangible benefits and encourages it to do so. However, given the licensee's technical bankruptcy situation and the continuation of its operations under the protection of the *Companies' Creditors Arrangement Act*, the Commission is of the opinion that it is justified in making an exception to its policy. Accordingly, the Commission will not require the contribution of tangible benefits for this transaction.

The TQS proposal to eliminate news programming

18. In its application to renew the licences of the TQS television stations and network, the applicant indicated that it no longer wanted to broadcast traditional newscasts. Rather, it proposed to broadcast another format of local programming that differs from the traditional spectrum of newscasts while discussing the people in the regions served by these stations.

19. In support of its application, the applicant cited Public Notice 1999-97, which states that the criterion used to determine local content eligibility is "local and regional reflection," which allows for much greater flexibility in the choice of programming for smaller ownership groups such as TQS. TQS was of the view that it could better fulfill its local programming requirements by focussing its resources on types of programming other than news.

20. In its initial application, the applicant committed to broadcast a certain number of hours of local programming for each of its stations to replace its newscasts. However, throughout the proceeding, the applicant changed the number of hours of local programming that it intended to broadcast.

The interveners

21. The vast majority of the interveners opposed the applicant's initial proposal to eliminate the broadcast of category 1 news programming. Federal, provincial and municipal government officials appeared to reiterate the importance accorded to the diversity of voices as well as to regional news in a democratic society, and to remind the Commission of the particular impacts that implementation of the TQS proposal would have in their respective regions.

22. The Quebec Press Council insisted that the Commission's decision with respect to the TQS file will be one of principle that will have significant repercussions on the state of news as a whole in Quebec. It constitutes the first real test of the credibility of the Commission's diversity of voices policy. Television remains the primary and preferred source of news for citizens. Journalistic treatment is essential to the maintenance of a diversity of editorial voices and nothing is guaranteed in the proposal by TQS. The Quebec Press Council considers that it is not by transforming news into a public forum pure and simple or by incorporating programs such as those currently found on community channels that the diversity of news treated in a professional manner by professionals will be maintained.

23. The various unions representing TQS employees as well as certain labour organizations also appeared to denounce the practice used by TQS since the approval of the interim management agreement, that is, to lay off a large number of employees and reduce its production of newscasts below the commitments set out in its current licence, even before obtaining Commission approval to do so. The unions argued that general interest television needs to offer newscasts.

24. The Commission received a large number of interventions filed by citizens and TQS viewers who stated their opposition to the elimination of local and regional newscasts and indicated their commitment to their local TQS station and to the programs that it broadcasts.

25. In their joint intervention filed as part of this public process, the owners of affiliate stations CFGS-TV Gatineau, CFVS-TV Val d'Or and CFTF-TV Rivière-du-Loup expressed their willingness to work with the new owners of TQS to adapt their programming to the new format advocated by the network.

26. The Quebec Minister of Culture and Communications stressed that conventional television should be accessible and free, and that it should rely on an over-the-air (OTA) broadcasting network, broadcast broad and diverse programming, including various genres, appeal to a large segment of the population, have a news service and newsrooms staffed with journalists, and reflect in its local programming the issues and interests of the communities it serves.

Regulatory framework

27. Although the *Broadcasting Act* (the Act) does not explicitly contain a requirement to broadcast news, section 3(1)(*i*)(i) refers to programming that should be balanced, that informs, enlightens and entertains, and that draws from local and regional sources. Section 3(1)(*i*)(iv) of the Act states also that programming provided by the system must "provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern."

28. In its policy for Canadian television (Public Notice 1999-97), the Commission indicated that the smaller ownership groups, such as TQS, offer a distinctiveness that needs to be encouraged by providing them with the flexibility to experiment with new genres of Canadian programming and new ways to meet the needs of their audiences. In addition, when the Commission outlined its policy for private conventional television, it did not deem it necessary to impose requirements governing information programming given the fundamentally important role that news plays in conventional television. However, the Commission reserved the right to impose specific conditions in the event that licensees did not demonstrate in their renewal applications that their local news or other local programming met the expectations of their audiences.

29. In its policy on the diversity of voices (Broadcasting Public Notice 2008-4), the Commission recognized that OTA television plays a very important role in providing a plurality of editorial voices across the country. The Commission also indicated that it is from the local media that most Canadians receive the information that is critical to their understanding of local, regional, national and international issues. Local media help to shape Canadians' views and to equip them to be active participants in the democratic life of the country.

30. According to the study conducted by Decima Research (July 2007) in the context of the diversity of voices hearing, television is the main source of local news for Canadians. Quebec residents obtain 50% of their local news from television, compared to 44% for other Canadians.

31. In the past, the Commission has set out the following definitions:

"News"

Newscasts, newsbreaks and headlines. Programs reporting on local, regional, national, and international events. Such programs may include weather reports, sportscasts, community news, and other related features or segments contained within "News Programs." (Public Notice 1999-205)

“Local programming”

Local programming means station productions or programming produced by community-based independent producers that reflects the particular needs and interests of residents of the area that the community-based television programming undertaking is licensed to serve. (Broadcasting Public Notice 2002-61)

“Local television station”

A commercial television station licensed to operate in a market where the licensee is expected to provide local news and information. (Broadcasting Public Notice 2008-4)

32. The Commission notes that in Broadcasting Decision 2008-76, it denied a regional broadcasting licence to YES TV, particularly because of concerns regarding the broadcast quality of its newscast, which, according to the undertaking’s business plan, would consist mainly of user-generated content. Moreover, because the applicant’s business plan was too piecemeal in nature, the Commission determined that its chances of becoming profitable were slim.

33. In Broadcasting Decision 2007-360, the Commission ruled that CITY-TV stations, including CKVU-TV Vancouver, must broadcast local news in a significant manner, not only general-interest morning programs interspersed with news. These broadcasts do not meet the quality criteria set out by the Commission.

34. In Broadcasting Decision 2008-75, the Commission denied a broadcasting licence to HDTV Networks Incorporated (HDTV), particularly because of an insufficient amount of local programming provided. The Commission determined that such a departure would undermine the soundness of the OTA broadcasting policy.

Commission’s analysis and determinations

35. The Commission agrees with the view of interveners that the broadcast of category 1 news programs, particularly local and regional news, is an essential condition of operation for conventional television. Accordingly, the Commission requested that TQS file a new proposal regarding its programming, including the broadcast of Category 1 local or regional news in a format of its choice. The Commission indicated that it was prepared to examine a concept that is innovative and different from the traditional newscast.

36. At the hearing, the applicant submitted a new proposal regarding the broadcast of local and news programming, including the following minimum broadcast levels:

Location	**Local programming**	**Category 1 news**
Montréal	15 hours per week	2 hours per week
Québec	10 hours per week	2 hours per week
Saguenay	1 hour and 30 minutes per week	50 minutes per week
Sherbrooke	1 hour and 30 minutes per week	50 minutes per week
Trois-Rivières	1 hour and 30 minutes per week	50 minutes per week

37. The Commission notes that the applicant proposes to integrate the broadcast of news in local morning and afternoon programs on Montréal and Québec stations, and in the local segment of afternoon programs on Saguenay, Sherbrooke and Trois-Rivières stations. TQS does not plan to broadcast news in a continuous block like traditional newscasts, but rather to broadcast it in segments throughout the above-mentioned programs. At the request of the Commission, TQS agreed to the imposition of a condition of licence to this effect.

38. The Commission recognizes the exceptional circumstances under which TQS operates, under the protection of the Companies' Creditors Arrangement Act. The Commission committed to examining the TQS applications with diligence and rendering a decision quickly.

39. The Commission considers the broadcast of category 1 news as a requirement for licensees of conventional television undertakings. The television policy states that local news broadcasts represent a key element in establishing a station's identity, and that local reflection is an indispensable requirement.

40. In Public Notice 1995-48, the Commission observed:

> The *Broadcasting Act* (the Act) states that the Canadian broadcasting system should "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity." The primary contribution by local stations to this objective, within their own communities, is the local news and information programming they produce.
>
> For the most part, over the current licence term, stations have succeeded in producing relevant, high quality news and information programming that continues to attract large audiences. The Commission notes that many licensees have improved this service by adding newscasts on the weekend.

41. The Commission's view on these matters has not changed. A broadcaster is not a conventional broadcaster unless it offers a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity. Local programming containing newscasts both on weekdays and the weekend constitutes an essential part of required programming.

42. Certain federal, provincial and municipal public officials, unions and citizens submitted additional comments following the hearing in which they reiterated their positions. They deemed TQS's revised proposals still unsatisfactory.

43. For its part, the Quebec Press Council requested that the Commission, in the event that it accepts the proposal by TQS, obtain a commitment from the applicant to remain a member of the Quebec Press Council. It also requested that TQS reach an agreement, if necessary, with the independent producer to whom it will entrust the production of news in order that it commit to participating in the Council's complaint resolution process once such a process is triggered.

44. Based on its examination of TQS's new offer, the Commission is of the view that the offer does not provide an acceptable level of local programming and news. Specifically, with regard to the Saguenay, Sherbrooke and Trois-Rivières markets, the Commission is of the view that the offer does not provide what it considers to be an appropriate level of coverage. The Commission further considers that it is essential for television stations to broadcast news on weekends.

45. In light of the above, and given the licensee's technical bankruptcy situation, the Commission accepts the applicant's proposal regarding local programming and category 1 news for the Montréal and Québec stations. Accordingly, the licensee will be required to broadcast no less than 15 hours of local programming per week in Montréal, of which at least 2 hours are devoted to category 1 news, and no less than 10 hours of local programming per week in Québec, of which at least 2 hours are devoted to category 1 news.

46. For the Saguenay, Sherbrooke and Trois-Rivières stations, the Commission requires that the licensee broadcast no less than 1 hour and 30 minutes of local programming per week, of which at least 1 hour is category 1 news. Conditions of licence to this effect are set out for each station in the appendices to this decision.

47. In addition, the Commission requires that the licensee broadcast no less than 30 minutes of category 1 news every Saturday and Sunday on all the stations of the TQS network. Conditions of licence to this effect are set out for each station and for the network in the appendices to this decision.

48. Although the Commission's requirement with respect to the weekly broadcast of local programming in Saguenay, Sherbrooke and Trois-Rivières is for 1 hour and 30 minutes, the Commission notes that during the hearing the applicant stated its intention to broadcast 2 hours and 30 minutes of local programming each week, and that the programming schedules it submitted reflect this proposal.

49. The Commission also expects the news segments broadcast to be original and not be repeated from one broadcast to the next, and that the applicant will take all necessary measures to ensure the continuity of news.

50. Considering the specific context of these renewals and the fact that these measures reflect an exception granted to TQS due to the undertaking's technical bankruptcy, the Commission intends to re-evaluate the issue of TQS news broadcasts at a public hearing to be held in spring 2011, which will coincide with the conversion of its analog licences to digital licences. The Commission is confident that TQS's financial situation will improve as a result of the expected revitalization, and expects that TQS will be able to improve its category 1 news offering for the remainder of its licence term.

51. The Commission expects the licensee to broadcast a higher level of local and news programming if its financial situation improves within the first three years of its licence term.

52. The Commission notes that these exceptions to its policies represent a temporary measure justified by TQS's technical bankruptcy and the continuation of its operations under the protection of the *Companies' Creditors Arrangement Act*, and that such exceptions will not apply to other OTA television undertakings unless they find themselves in the same situation.

53. At the conclusion of the hearing, the Commission required that TQS file, by 16 June 2008, new programming schedules that take into account the new proposal to insert news segments. The Commission received new programming schedules from TQS, and is of the view that they take into account the new proposal to insert news segments. However, given that the Commission is requiring the broadcast of at least 30 minutes of category 1 news every Saturday and Sunday on all the stations of the TQS network, and given the requirement that Saguenay, Sherbrooke and Trois-Rivières stations broadcast 60 minutes of category 1 news segments, the applicant is required to again amend the station and network programming schedules to meet these new requirements. In light of the above, the Commission requires that, as a condition of approval, the applicant file revised programming schedules within 30 days of the date of this decision.

54. The Commission notes that some interveners have suggested that the Commission no longer allow TQS to broadcast local advertising, given that it no longer broadcasts local news. However, the television policy states that permission to broadcast local advertising is linked to the broadcast of local programming, not local news alone. Under this policy, TQS's current proposal would allow it to continue selling local advertising in each market in which its stations are operated, especially given that TQS will broadcast local news.

Report on local news services

55. The Commission also requires that in addition to the summary of financial data that TQS files with its annual report pursuant to the requirements of the Television Broadcasting Regulations, 1987, TQS must file a report containing the operating revenues or losses associated with the local news offering. This report will include network expenditures prorated to allocate to each station its share of network expenditures that are usually allocated fully to the Montréal station in the annual report filed with the Commission. It must also include national network advertising revenues pro-rated to allocate to each

station its share of national network advertising revenues. This additional report must accompany the TQS annual report and be filed in the same format as the table submitted by TQS at the 12 June hearing in the National Capital Region for each of the first three years.

The TQS proposal with respect to priority programs and independent production

56. In its application to renew the licences of its television stations and the TQS network, the applicant committed to broadcast the following hours of priority programs during peak times:

Commitment	Broadcast years
2 hours per week	2009, 2010, 2011
3 hours per week	2012, 2013, 2014, 2015

57. TQS intends to continue assigning a large part of its production to independent producers. The current licence requires that TQS spend no less than $4 million per year on independent production, and a total of at least $40 million over the seven years of its licence term. TQS indicated that it would be prepared to accept the same condition of licence in its renewal.

Interveners

58. Some interveners commented on the TQS proposals regarding the broadcast of priority programs, the use of independent production and the negotiation of terms of trade agreements with independent producers.

59. Affiliated stations and some independent producers supported TQS projects with respect to local independent production, despite the reduction in priority programs proposed by the applicant.

60. The Association des producteurs de films et de télévision du Québec (APFTQ), the Canadian Film and Television Production Association and the Association québécoise de l’industrie du disque, du spectacle et de la vidéo expressed concerns regarding the licensee’s reduced commitment to priority programs. They considered that the continuation of the condition of licence requiring TQS to spend $4 million per year and $40 million over 7 years on independent production is not sufficient. The APFTQ added that the importance that TQS attaches to independent production in its proposed business plan should lead the undertaking to accept a greater obligation in this regard, in the form of a requirement to spend 10% of gross network revenues on independent production.

61. Interveners from labour groups expressed concerns regarding TQS’s future profitability in the event that it assigns an even greater part of its production to independent producers, namely due to difficulty obtaining broadcast rights on multiple platforms. Interveners from political groups raised concerns regarding TQS’s proposal to reduce the number of priority Canadian programs broadcast, citing their importance to Quebec culture.

Regulatory framework

62. Section 3(1)(i)(v) of the Act states that “the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector.”

63. In the past, the Commission has indicated that it expects 75% of priority programs to be sourced from independent producers. In addition, the Commission encourages trade agreements between broadcasters and independent producers. The Commission expects licensees to provide draft, or signed, terms of trade agreements with independent producers as part of their licence renewal applications. The Commission will examine the role of independent production at the time of licence renewal.

64. In its private television policy, the Commission ruled that large multi-station groups must broadcast eight hours per week of priority Canadian programs during peak times; however, the Commission sets requirements for small ownership groups on a case-by-case basis. This includes TQS, which is required to broadcast five hours per week of priority Canadian programs during peak times.

Commission’s analysis and determinations

65. Although the current approach requires that 75% of priority programs broadcast by the licensee be produced by independent producers, such a requirement was not imposed on TQS at the time of its last licence renewals.

66. The Commission notes that the current licences include a commitment to broadcast at least five hours of priority programs per week during peak times (7 p.m. to 11 p.m.). The Commission notes that the applicant’s proposal to reduce this commitment to two hours during the first three years of its licence term and to three hours for the remaining four years of its licence term represents a significant reduction.

67. In the television policy, the Commission indicates that it considers it essential that broadcasters continue to contribute to the development, production and broadcast of priority Canadian programs. The Commission notes that, in the past, it has offered greater flexibility to TQS due to its special circumstances. However, the Commission adds that TQS’s initial proposal is insufficient.

68. Given the importance placed on priority programs, the Commission requested that TQS file a detailed plan demonstrating that it will progressively increase the number of hours of priority programs to achieve the current level of its commitments, which is to broadcast five hours per week of priority programs by the end of the licence term according to a specific timeline.

69. In response to this request, TQS committed to broadcast, on average, on an annual basis, the following number of hours of Canadian priority programs over the licence term:

Hours per week	Broadcasting year
2 hours	2008–2009 2009–2010 2010–2011
3 hours	2011–2012 2012–2013
4 hours	2013–2014
5 hours	2014–2015

70. The Commission is of the opinion that TQS's proposal is satisfactory given the technical bankruptcy of TQS.

71. The Commission also intends to re-examine the issue of the broadcast of Canadian priority programs by TQS when it re-examines, in the context of the public hearing to be held in spring 2011, the issue of the broadcast category 1 news.

72. With respect to the use of independent production, the Commission notes that although TQS largely exceeded the spending requirement imposed on it as a condition of licence, TQS stated that it is unable to accept an increase in this requirement because of its financial situation. However, the Commission notes TQS's firm commitment to continue using independent production for a significant proportion of its programming and even increase this proportion.

73. The applicant indicated that it is affiliated to an independent production corporation (Remstar Production) and that this affiliated corporation would produce programs for TQS. At the hearing, the applicant stated that the sums disbursed for programs produced by this corporation would not be included in the sums required by its condition of licence relating to expenditures on programming produced by independent producers.

74. The Commission notes that the TQS network is subject to a condition of licence requiring the licensee to allocate at least $4 million of its total annual programming budget and at least $40 million over seven years, to programming produced by Canadian independent producers, excluding any company that is directly or indirectly affiliated to shareholders of the licensee. TQS indicated that it is willing to accept the same condition of licence in its renewal. Accordingly, a **condition of licence** to that effect is set out in Appendix 7 to this decision. The Commission notes that TQS significantly exceeds the requirement imposed on it as a result of this condition of licence and expects TQS to continue to do so.

75. With respect to the issue of terms of trade agreements, the Commission announced in Broadcasting Public Notice 2007-53 that it expected licensees to file a draft agreement concerning the terms of trade agreements with independent producers. At the public hearing, Remstar noted its expertise relating to independent production and stated that it understood the importance of reaching terms of trade agreements. This is why TQS committed to establish such agreements within six months following the date of completion of the transaction enabling Remstar to take effective control of TQS. Accordingly, the Commission expects TQS to file the terms of trade by 31 December 2008.

TQS's proposal with respect to Canadian content

76. The *Television Broadcasting Regulations, 1987* (the Regulations), stipulate that private licensees must broadcast at least 60% Canadian content during the day and at least 50% Canadian content in the evening.

77. According to a preliminary Commission report compiled from the logs submitted by TQS, the licensee would not have always met the minimum of Canadian content level during its current licence term, depending on the station and/or the operating year, and therefore would have breached sections 4(6) and 4(7)(*b*) of the Regulations.

78. In response to a deficiency question, TQS stated that the preliminary report had been prepared from logs that contained errors. It explained that the situation was caused by the delay in obtaining producer codes by independent producers and the technical and computer-related difficulties resulting from the implementation of a new routing and broadcasting system.

79. In 2004, at the last licence renewal of TQS's Sherbrooke, Saguenay and Trois-Rivières stations, the issue of non-compliance with the Canadian content regulatory requirements was raised. The Commission reiterated the importance of keeping up-to-date logs and stated that it would re-examine the accuracy of the licensee's logs and its compliance with its commitments and the regulatory requirements at its next licence renewal.

Commission's analysis and determinations

80. At the hearing, TQS admitted that the Canadian content broadcast logs submitted to the Commission have for many years contained an unacceptable level of errors caused by incorrect program coding.

81. The Commission notes that, at the hearing, TQS submitted corrected logs. The corrections considerably reduced the number of errors detected by the Commission's computer system and substantially increased the percentage of Canadian content.

82. At the hearing, TQS also stated that it had implemented a new computer system in January 2008 to enable it to send error-free logs to the Commission. TQS committed to confer responsibility for ensuring that TQS logs are fully compliant to a member of senior management within six months following the date of completion of the transaction. This member of TQS's senior management must report monthly to the two controlling shareholders, Julien and Maxime Rémillard.

83. The Commission notes the commitments made by TQS to improve the reliability of the Canadian content program logs. The Commission expects the TQS logs to be accurate so that it will be able to correctly evaluate TQS's compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewals.

Conversion to digital

84. In its application, TQS stated its intention to invest $5 million during fiscal year 2010 and $10 million during fiscal year 2011 on the conversion to digital. The Commission notes that no interveners commented on this issue.

85. The Commission notes that over the new licence term, the TQS network and television programming undertakings must cease analog television transmission. More specifically, in Broadcasting Public Notice 2007-53, the Commission determined that "television licensees will be authorized to broadcast only digital OTA signals after 31 August 2011."

86. The Commission is of the view that broadcasters should implement the transition to digital as quickly as possible and not wait until August 2011. If all broadcasters wait until the last moment to proceed to the transition, there could be a shortage of professional engineers and competent technicians capable of assuming the development of new plans and the installation of new systems and structures. The Commission therefore encourages TQS to proceed to this transition at the earliest possible date.

87. The conditions of licence imposed in this decision will remain in effect despite the conversion from analog to digital. In the event that the conversion results in amendments to the conditions of licence, these amendments will be carried out accordingly. The Commission reminds TQS that it must comply with the technical requirements of the Department of Industry over the entire licence term.

Social issues

88. Section 3(1)(*p*) of the Act states that "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose." Consequently, the Commission expects television broadcasters to endeavour to improve access to their programs for people who are deaf or hard of hearing and people who are blind or who have a visual impairment.

Captioning

89. Captioning enables people who are deaf or hard of hearing to access television programs. The Commission's current policy on closed captioning requires broadcasters to caption 100% of their programs over the broadcast day, with the exception of advertising and promos (Broadcasting Public Notice 2007-54).

90. In the policy, the Commission states that any requests for exceptions to the general policy will require the broadcaster to demonstrate, with specific and detailed supporting evidence, including financial information, at licence renewal or initial licensing, that it is impossible for it to meet the 100% captioning requirement and that a tailoring of the requirement is necessary. TQS requested that the Commission tailor its captioning requirements based on economic and technical constraints related to captioning methods.

91. As part of this proceeding, the Quebec Centre for the Hearing Impaired (QCHI) intervened on the captioning issue. According to the QCHI, TQS did not present compelling arguments in support of its application for accommodation concerning the captioning policy requirements. The QCHI was also of the opinion that the technical challenge cited by TQS with respect to captioning of its OTA programming no longer constitutes an obstacle because of technological advances. Furthermore, the QCHI stated that TQS's financial problems did not relieve it of its duty to present a detailed plan of its intentions regarding captioning.

92. At the hearing, the Commission requested that TQS clarify its commitments regarding captioning. TQS provided its cost forecasts for the captioning of its programs and proposed a progressive plan to improve the quality and quantity of captioning it broadcasts. The licensee committed to caption nearly all of its programming as of 1 January 2014, based on the following timeline:

Broadcast year	Percentage of captioning
As of 1 September 2009	55%
As of 1 September 2010	60%
As of 1 September 2011	70%
As of 1 September 2012	80%
As of 1 September 2013	90%
As of 1 January 2014, and subsequent years	100%

93. In its additional comments dated 19 June 2008, the QCHI indicated that, while it is satisfied with the applicant's decision to caption almost all of its programming one year earlier than it had projected at the time of the submission of its initial application, it emphasized that TQS should caption all of its programming by 1 January 2014.

94. The Commission expects TQS to fulfil this commitment, including the proposed timeline, in order to progressively comply with the Commission's captioning policy. A **condition of licence** to that effect is set out in each of the appendices to this decision.

Described video

95. Audio description and described video enable people who are blind or visually impaired to access television programs. All broadcasters can, and should, provide audio description. Therefore, the Commission requires the networks to ensure that they obtain audio description wherever its use is appropriate.

96. Since 2001, the Commission has imposed conditions of licence with respect to described video. The Commission has not yet imposed any such conditions of licence on TQS and is of the opinion that it is still too early to require commitments to that effect given the licensee's precarious financial situation. The Commission nevertheless expects TQS, over the new licence term, to purchase and broadcast versions of programs that integrate description whenever possible. It also expects TQS to file a plan and specific commitments pertaining to described video for its programs at the time of its next licence renewal.

97. The Commission expects licensees to take appropriate action to ensure at all times that their customer service takes into account the needs of persons with disabilities.

Cultural diversity

98. All broadcasting licensees have the responsibility to contribute to the reflection and representation of Canadian cultural diversity in order to promote the objectives set out in section 3(1)(*d*) of the Act, namely, to reflect the multicultural and multiracial nature of Canadian society. More specifically, in Broadcasting Public Notice 2005-24, the Commission stated that it expected all broadcasters to share responsibility for assisting in the development of a broadcasting system that accurately reflects Canada's ethnocultural minorities and Aboriginal peoples. In the same public notice, the Commission added that the broadcasting system should provide employment opportunities for people of all ethnocultural backgrounds, whether as writers, presenters, producers, directors, or actors, and expected broadcasters to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical. The reflection and inclusion of persons with disabilities is henceforth included in the Commission's cultural diversity policy.

99. Since 2001, the Commission's approach to cultural diversity on television has been comprised of two components: (a) the Commission requires all broadcast groups to file corporate plans at licence renewal as well as annual progress reports, and (b) the Commission also created the Task Force for Cultural Diversity on Television, which includes representatives of the industry and of the community, to undertake research and develop best practices and industry initiatives. The result of the Task Force's research and the Commission's reaction are recorded in Broadcasting Public Notice 2005-24.

100. In this case, given the change in effective control, TQS's revitalization plan and the restructuring of its operations, the Commission requires TQS to develop and file a new corporate plan on cultural diversity for the next licence term by 31 January 2009.

101. TQS must then file, by 31 January of each year beginning in 2010, an annual report on the progress achieved with respect to the objectives of its corporate plan. The corporate plan is an action plan that must include specific and detailed commitments in the following three fields of activity: the undertaking's corporate responsibility, reflection of diversity in programming and community participation.

Licence renewal

102. The Commission **renews** the broadcasting licences for the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke and CFRS-TV Saguenay, and for the TQS network, from 1 September 2008 to 31 August 2015. The licences will be subject to the **conditions** set out in the appendices to this decision.

103. The Commission will issue these new broadcasting licences to TQS Inc. for the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke and CFRS-TV Saguenay, and for the TQS network, upon surrender of the licences issued at the time of the administrative renewal set out in Broadcasting Decision 2008-58, which will no longer be effective as of 1 September 2008.

Employment equity

104. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *High definition over-the-air digital television service in the Greater Toronto Area*, Broadcasting Decision CRTC 2008-76, 3 April 2008

- *National high definition over-the-air digital television service*, Broadcasting Decision CRTC 2008-75, 3 April 2008

- *Administrative renewals*, Broadcasting Decision CRTC 2008-58, 5 March 2008

- *Diversity of voices* – Regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

- *Transfer of effective control of 1708487 Ontario Inc., 1738700 Ontario Inc. and CHUM Television Vancouver Inc. to Rogers Media Inc.*, Broadcasting Decision CRTC 2007-360, 28 September 2007

- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007

- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007

- *Commission's response to the report of the Task Force for Cultural Diversity on Television*, Broadcasting Public Notice CRTC 2005-24, 21 March 2005

- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002

- *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements*, Public Notice CRTC 1999-205, 23 December 1999

- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

- *Introduction to decisions renewing the licences of privately-owned English-language television stations*, Public Notice CRTC 1995-48, 24 March 1995

This decision and the appropriate appendix are to be attached to each licence. This document is available in alternative format on request and may also be examined in PDF format or in HTML at the following Internet site: http://www.crtc.gc.ca.

Appendix 1 to Broadcasting Decision CRTC 2008-129

Condition of approval, terms, conditions of licence and commitment for CFJP-TV Montréal

Condition of approval

The applicant shall file a revised programming schedule for the station CFJP-TV Montréal within 30 days of the date of this decision.

Terms

The licence will be in effect from 1 September 2008 to 31 August 2015. This expiry date is conditional on the licensee's presenting itself at a hearing to be held in the spring of 2011 to discuss issues related to the broadcast of news, the broadcast of Canadian priority programming and the conversion of its analog licence to a digital licence.

Conditions of licence

1. The licensee shall produce and broadcast at least 15 hours of local programming per week, including at least 2 hours of category 1 news.

2. In addition to the 2 hours of category 1 news required by condition of licence no. 1, the licensee shall broadcast at least 30 minutes of category 1 news every Saturday and every Sunday.

3. The licensee shall caption, at minimum, the following percentages of all programming over the broadcast day:

Broadcast year beginning	Percentage of captioning
1 September 2009	55%
1 September 2010	60%
1 September 2011	70%
1 September 2012	80%
1 September 2013	90%
1 January 2014, and subsequent years	100%

4. The licensee shall adhere to the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

5. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended

if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

7. In addition to the maximum number of minutes of advertising material permitted under subsection11(1) of the *Television Broadcasting Regulations, 1987*, the licensee may broadcast infomercials. The definition of infomercials and the criteria for broadcasting them are set out, respectively, in *Amendment to the* Television Broadcasting Regulations, 1987 *to permit, by condition of licence, the airing of "infomercials" during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994 and *Clarification of Certain Matters Relating to the Airing of "Infomercials" During the Broadcast Day*, Public Notice CRTC 1995-93, 13 June 1995, as they may be amended from time to time.

Commitment

- The licensee must improve the reliability of its Canadian content broadcast logs and must ensure that its logs are accurate so that the Commission may correctly evaluate TQS' compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewal.

Appendix 2 to Broadcasting Decision CRTC 2008-129

Condition of approval, terms, conditions of licence and commitment for CFJP-DT Montréal

Condition of approval

The applicant shall file a revised programming schedule for the station CFJP-DT Montréal within 30 days of the date of this decision.

Terms

The licence will be in effect from 1 September 2008 to 31 August 2015. This expiry date is conditional on the licensee's presenting itself at a hearing to be held in the spring of 2011 to discuss issues related to the broadcast of news, the broadcast of Canadian priority programming and the conversion of its analog licence to a digital licence.

Conditions of licence

1. The licensee shall produce and broadcast at least 15 hours of local programming per week, including at least 2 hours of category 1 news.

2. In addition to the 2 hours of category 1 news required by condition of licence no. 1, the licensee shall broadcast at least 30 minutes of category 1 news every Saturday and every Sunday.

3. The licensee shall caption, at minimum, the following percentages of all programming over the broadcast day:

Broadcast year beginning	Percentage of captioning
1 September 2009	55%
1 September 2010	60%
1 September 2011	70%
1 September 2012	80%
1 September 2013	90%
1 January 2014, and subsequent years	100%

4. The licence is subject to the terms and conditions that apply to the analog television station CFJP-TV Montréal.

5. The licensee shall ensure that all programming broadcast on the undertaking is a simulcast of the programming broadcast on CFJP-TV Montréal, with the exception of up to 14 hours per week of unduplicated, supplementary programming.

6. The licensee shall ensure that at least 50% of the unduplicated, supplementary programming broadcast on the undertaking is Canadian.

7. The licensee shall ensure that all of the unduplicated, supplementary programming broadcast on the undertaking is broadcast in a wide screen (16:9 aspect ratio), high definition format.

8. The licensee shall ensure that all programs that are simulcast on the undertaking, and that are available to the licensee in a wide screen format, are also broadcast in that format.

9. The licensee shall ensure that all programs that are simulcast on the undertaking during the evening broadcast period, and that are available to the licensee in high definition, are also broadcast in high definition.

10. The licensee shall ensure that the transmission of data does not affect the quality or quantity of high definition programming.

11. In addition to the maximum number of minutes of advertising material permitted under subsection11(1) of the *Television Broadcasting Regulations, 1987*, the licensee may broadcast infomercials. The definition of infomercials and the criteria for broadcasting them are set out, respectively, in *Amendment to the* Television Broadcasting Regulations, 1987 *to permit, by condition of licence, the airing of "infomercials" during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994 and *Clarification of Certain Matters Relating to the Airing of "Infomercials" During the Broadcast Day*, Public Notice CRTC 1995-93, 13 June 1995, as they may be amended from time to time.

Commitment

- The licensee must improve the reliability of its Canadian content broadcast logs and must ensure that its logs are accurate so that the Commission may correctly evaluate TQS's compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewal.

Appendix 3 to Broadcasting Decision CRTC 2008-129

Condition of approval, terms, conditions of licence and commitment for CFAP-TV Québec

Condition of approval

The applicant shall file a revised programming schedule for the station CFAP-TV Québec within 30 days of the date of this decision.

Terms

The licence will be in effect from 1 September 2008 to 31 August 2015. This expiry date is conditional on the licensee's presenting itself at a hearing to be held in the spring of 2011 to discuss issues related to the broadcast of news, the broadcast of Canadian priority programming and the conversion of its analog licence to a digital licence.

Conditions of licence

1. The licensee shall produce and broadcast at least 10 hours of local programming per week, including at least 2 hours of category 1 news.

2. In addition to the 2 hours of category 1 news required by condition of licence no. 1, the licensee shall broadcast at least 30 minutes of category 1 news every Saturday and every Sunday.

3. The licensee shall caption, at minimum, the following percentages of all programming over the broadcast day:

Broadcast year beginning	Percentage of captioning
1 September 2009	55%
1 September 2010	60%
1 September 2011	70%
1 September 2012	80%
1 September 2013	90%
1 January 2014, and subsequent years	100%

4. The licensee shall adhere to the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

5. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

7. In addition to the maximum number of minutes of advertising material permitted under subsection11(1) of the *Television Broadcasting Regulations, 1987*, the licensee may broadcast infomercials. The definition of infomercials and the criteria for broadcasting them are set out, respectively, in *Amendment to the* Television Broadcasting Regulations, 1987 *to permit, by condition of licence, the airing of "infomercials" during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994 and *Clarification of Certain Matters Relating to the Airing of "Infomercials" During the Broadcast Day*, Public Notice CRTC 1995-93, 13 June 1995, as they may be amended from time to time.

Commitment

- The licensee must improve the reliability of its Canadian content broadcast logs and must ensure that its logs are accurate so that the Commission may correctly evaluate TQS's compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewal.

Appendix 4 to Broadcasting Decision CRTC 2008-129

Condition of approval, terms, conditions of licence and commitment for CFKM-TV Trois-Rivières

Condition of approval

The applicant shall file a revised programming schedule for the stations CFKM-TV Trois-Rivières within 30 days of the date of this decision.

Terms

The licence will be in effect from 1 September 2008 to 31 August 2015. This expiry date is conditional on the licensee's presenting itself at a hearing to be held in the spring of 2011 to discuss issues related to the broadcast of news, the broadcast of Canadian priority programming and the conversion of its analog licence to a digital licence.

Conditions of licence

1. The licensee shall produce and broadcast at least 1 hour and 30 minutes of local programming per week, including at least 1 hour of category 1 news.

2. In addition to the 1 hour of category 1 news required by condition of licence no. 1, the licensee shall broadcast at least 30 minutes of category 1 news every Saturday and every Sunday.

3. The licensee shall caption, at minimum, the following percentages of all programming over the broadcast day:

Broadcast year beginning	Percentage of captioning
1 September 2009	55%
1 September 2010	60%
1 September 2011	70%
1 September 2012	80%
1 September 2013	90%
1 January 2014, and subsequent years	100%

4. The licensee shall adhere to the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

5. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

7. In addition to the maximum number of minutes of advertising material permitted under subsection 11(1) of the *Television Broadcasting Regulations, 1987*, the licensee may broadcast infomercials. The definition of infomercials and the criteria for broadcasting them are set out, respectively, in *Amendment to the* Television Broadcasting Regulations, 1987 *to permit, by condition of licence, the airing of "infomercials" during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994 and *Clarification of Certain Matters Relating to the Airing of "Infomercials" During the Broadcast Day*, Public Notice CRTC 1995-93, 13 June 1995, as they may be amended from time to time.

Commitment

- The licensee must improve the reliability of its Canadian content broadcast logs and must ensure that its logs are accurate so that the Commission may correctly evaluate TQS's compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewal.

Appendix 5 to Broadcasting Decision CRTC 2008-129

Condition of approval, terms, conditions of licence and commitment for CFKS-TV Sherbrooke

Condition of approval

The applicant shall file a revised programming schedule for the station CFKS-TV Sherbrooke within 30 days following the date of this decision.

Terms

The licence will be in effect from 1 September 2008 to 31 August 2015. This expiry date is conditional on the licensee's presenting itself at a hearing to be held in the spring of 2011 to discuss issues related to the broadcast of news, the broadcast of Canadian priority programming and the conversion of its analog licence to a digital licence.

Conditions of licence

1. The licensee shall produce and broadcast at least 1 hour and 30 minutes of local programming per week, including at least 1 hour of category 1 news.

2. In addition to the 1 hour of category 1 news required by condition of licence no. 1, the licensee shall broadcast at least 30 minutes of category 1 news every Saturday and every Sunday.

3. The licensee shall caption, at minimum, the following percentages of all programming over the broadcast day:

Broadcast year beginning	Percentage of captioning
1 September 2009	55%
1 September 2010	60%
1 September 2011	70%
1 September 2012	80%
1 September 2013	90%
1 January 2014, and subsequent years	100%

4. The licensee shall adhere to the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

5. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

7. In addition to the maximum number of minutes of advertising material permitted under subsection 11(1) of the *Television Broadcasting Regulations, 1987*, the licensee may broadcast infomercials. The definition of infomercials and the criteria for broadcasting them are set out, respectively, in *Amendment to the* Television Broadcasting Regulations, 1987 *to permit, by condition of licence, the airing of "infomercials" during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994 and *Clarification of Certain Matters Relating to the Airing of "Infomercials" During the Broadcast Day*, Public Notice CRTC 1995-93, 13 June 1995, as they may be amended from time to time.

Commitment

- The licensee must improve the reliability of its Canadian content broadcast logs and must ensure that its logs are accurate so that the Commission may correctly evaluate TQS's compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewal.

Appendix 6 to Broadcasting Decision CRTC 2008-129

Condition of approval, terms, conditions of licence and commitment for CFRS-TV Saguenay

Condition of approval

The applicant shall file a revised programming schedule for the station CFRS-TV Saguenay within 30 days of the date of this decision.

Terms

The licence will be in effect from 1 September 2008 to 31 August 2015. This expiry date is conditional on the licensee's presenting itself at a hearing to be held in the spring of 2011 to discuss issues related to the broadcast of news, the broadcast of Canadian priority programming and the conversion of its analog licence to a digital licence.

Conditions of licence

1. The licensee shall produce and broadcast at least 1 hour and 30 minutes of local programming per week, including at least 1 hour of category 1 news.

2. In addition to the 1 hour of category 1 news required by condition of licence no. 1, the licensee shall broadcast at least 30 minutes of category 1 news every Saturday and every Sunday.

3. The licensee shall caption, at minimum, the following percentages of all programming over the broadcast day:

Broadcast year beginning	Percentage of captioning
1 September 2009	55%
1 September 2010	60%
1 September 2011	70%
1 September 2012	80%
1 September 2013	90%
1 January 2014, and subsequent years	100%

4. The licensee shall adhere to the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

5. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

7. In addition to the maximum number of minutes of advertising material permitted under subsection11(1) of the *Television Broadcasting Regulations, 1987*, the licensee may broadcast infomercials. The definition of infomercials and the criteria for broadcasting them are set out, respectively, in *Amendment to the* Television Broadcasting Regulations, 1987 *to permit, by condition of licence, the airing of "infomercials" during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994 and *Clarification of Certain Matters Relating to the Airing of "Infomercials" During the Broadcast Day*, Public Notice CRTC 1995-93, 13 June 1995, as they may be amended from time to time.

Commitment

- The licensee must improve the reliability of its Canadian content broadcast logs and must ensure that its logs are accurate so that the Commission may correctly evaluate TQS's compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewal.

Appendix 7 to Broadcasting Decision CRTC 2008-129

Condition of approval, terms, conditions of licence and commitments for the network TQS

Condition of approval

The applicant shall file revised programming schedules for each station within 30 days of the date of this decision.

Terms

The licence will be in effect from 1 September 2008 to 31 August 2015. This expiry date is conditional on the licensee's presenting itself at a hearing to be held in the spring of 2011 to discuss issues related to the broadcast of news, the broadcast of Canadian priority programming and the conversion of its analog licence to a digital licence.

Conditions of licence

1. The licensee shall broadcast at least 15 hours of local programming each week in Montréal, including at least 2 hours of category 1 news, at least 10 hours of local programming each week in Québec, including at least 2 hours of category 1 news, and at least 1 hour and 30 minutes of local programming every week in each of the following locations: Saguenay, Sherbrooke and Trois-Rivières, including at least 60 minutes of category 1 news.

2. In addition to the number of hours of category 1 news required by condition of licence no. 1, the licensee shall produce and broadcast on each of the stations of the TQS network at least 30 minutes of category 1 news every Saturday and every Sunday.

3. The licensee shall caption, at minimum, the following percentages of all programming over the broadcast day:

Broadcast year beginning	Percentage of captioning
1 September 2009	55%
1 September 2010	60%
1 September 2011	70%
1 September 2012	80%
1 September 2013	90%
1 January 2014, and subsequent years	100%

4. The licensee shall allocate at least $4 million of its total annual programming budget and at least $40 million over seven years, to programming produced by Canadian independent producers, excluding any company that is directly or indirectly affiliated to shareholders of the licensee.

5. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the Canadian Association of Broadcasters' Voluntary Code Regarding Violence in Television Programming, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' Equitable Portrayal Code, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

7. The licensee shall adhere to the provisions of the Canadian Association of Broadcasters' Broadcast Code for Advertising to Children, as amended from time to time and approved by the Commission.

Commitments

- The licensee must establish terms of trade agreements within 6 months following the date of completion of the transaction enabling Remstar Diffusion inc. to take effective control of TQS inc. TQS must submit to the Commission the terms of such agreements by 31 December 2008.

- The licensee must improve the reliability of its Canadian content broadcast logs and must ensure that its logs are accurate so that the Commission may correctly evaluate TQS's compliance with its commitments, conditions of licence and regulatory requirements at the time of its next licence renewal.

- The licensee must broadcast, on average, on an annual basis, the following levels of Canadian priority programming throughout its licence term:

Hours per week	Broadcast year
2 hours	2008-2009 2009-2010 2010-2011
3 hours	2011-2012 2012-2013
4 hours	2013-2014
5 hours	2014-2015

Dissenting opinion of Commissioner Michel Morin

TQS-REMSTAR DIFFUSION, the exception to the Canadian broadcasting system

By renewing in 2008 the licence of TQS-Remstar Diffusion (TQS Remstar) for a period of seven years, the Commission is granting an important exception that risks prejudicing the entire Canadian broadcasting system.

In fact, when it comes time to renew their licences in 2009, other broadcasters could, during the next hearings, invoke the programming that TQS is now pushing – the absence of category 1 news during peak listening hours of 12 p.m., 6 p.m. and after 10 p.m. – by putting forth the same reasons as TQS in order to pull out of their commitments to produce news broadcasts during peak listening hours.

It is obvious that the proposal by the Montréal-based broadcaster will drag down the Canadian broadcasting system with respect to one of its essential components: news.

Never before in the history of our broadcasting system have we seen a network composed of over-the-air television stations devote such a small proportion of its budget to category 1 news production! The Montréal company (which also owns television stations in Québec, Sherbrooke, Trois-Rivières and Saguenay) will allocate some $3.2 million to news out of its total programming budget of $47.3 million, representing 6.9% of its total programming costs. In 2007, the last complete year for this network, TQS – administered by Remstar Diffusion up until very recently – had allocated to news 27.8% of its budget. This is a far cry from the 6.9% that Remstar is proposing for next year!

I fully understand that when in a revitalization and financial restructuring mode, a broadcaster must seek ways to reduce costs. However, when the cost reduction is almost entirely carried out at the expense of the news service in such a way that information ends up being the poor child of the entire enterprise, the broadcaster goes clearly against not only the policies that the Commission has been promoting for the last 40 years but also against the market itself.

According to confidential figures to which I had access, in 2007 all the other over-the-air broadcasters in the country without exception allocated on average 23% of their total programming costs to category 1 news, not including the category 2(*a*) programs featuring comments or analysis and interpretation. More precisely, in 2007 TVA, Global and CTV devoted to category 1 news more than $200 million from budgets totalling more than $1 billion.

By all accounts, contrary to other over-the-air private broadcasters in Canada, the shareholders of Remstar Diffusion do not want to broadcast news… which in this country is unprecedented for an over-the-air television network. By accepting this precedent, the Commission goes against the policies touching upon news, Canadian content and Canadian artists it has always put centre stage.

Moreover, it is not through a condition of licence that Global, CTV and TVA devote more than 20% of their programming budget to local, national and international category 1 news. It is the market that dictates this issue; it is the interest shown by their viewers for the news services during peak viewing hours that motivates them to offer this product.

Thus, at 12 p.m., 6 p.m. and 10 p.m., while the other networks both private and public offer news to their respective audiences, TQS II – TQS version 2 – will try to otherwise entertain them. By having to produce so little category 1 news, it will be able to drown them in comment and opinion broadcasts during the morning hours or the periods that precede the major 6 p.m. news programs.

At 6 p.m. TQS will have “carte blanche” to amuse its audiences with a quiz show and rival its private and public competitors without having to offer the traditional newscast. What a fine example! What kind of exception has the Commission granted by authorizing not only a change in effective control of TQS but also licence renewals for a period of seven years, even before the current licences have expired?

In my opinion, regulation by exception should be the phobia of any regulator. By authorizing an over-the-air broadcaster to produce so little category 1 news, the Commission is granting an exception not only for Canada but also for all of North America, since the major private American networks – NBC, ABC and CBS – all produce after 6 p.m. news that can be described within the Canadian regulatory system as category 1 news.

During the course of the hearing, the licence holder admitted to not having requested a market study. In other words, before cutting into a news service that was worthy of its name, TQS did not even take the trouble to evaluate the effect that this reduction would have on viewer loyalty. I am both surprised and troubled to see that the Commission doesn’t even mention this fact in its decision. This is clearly a shortcut, which I won’t dare characterize after having personally participated in several hearings related to the granting of new licences for radio stations.

In taking this decision, the Commission is legitimizing a discount formula for the Canadian broadcasting system. In other words, it is granting an unprecedented exception in the system to a player that is reducing to the greatest extent possible the delivery of category 1 news, while it has just refused in the context of its report on the Canadian Television Fund (CTF) to grant an exception to Quebecor Media, which had proposed not to decrease but to increase its Canadian content on all its platforms. As I stated in my dissenting opinion on this matter (see *CRTC submits report on the Canadian Television Fund*, 5 June 2008), I do not object to granting exceptions to industry players who want to push the system higher, but I certainly do object to doing so in the case of players who want to drag it down, especially if it is at the expense of services for the public.

Remstar Diffusion and local news

Since its launch in 1986, the TQS network has always been identified with the production of local news. This was true not only in Montréal but also in the other regions of Quebec. In many of its markets, including that of Québec – the second most important city served by the network –, TQS was even ahead of the public broadcaster, the Canadian Broadcasting Corporation (CBC), in market share.

What does Remstar propose today regarding the matter of local news?

According to the formula it is proposing, TQS-Remstar will offer nine minutes of category 1 news from the regions to be broadcast during the morning network news and six minutes to be broadcast during the two-hour network broadcast at the end of the afternoon from 4 p.m. to 6 p.m.. In other words, fifteen minutes in total coming from regions other than Montréal and Québec, all lumped together. With TQS, Quebec will really be cut in two!

Where in all of this are the break aways to make room for local issues, some extremely local in content, but so appreciated by viewers given the focus on their own corner on the world? Five minutes in total! Five minutes of category 1 news per day for local news about the cities and towns in the regions, the municipal councils, the courthouses, the economy, the environment, health… all the information that doesn't warrant province-wide broadcast on every station, but which is still very important for citizens in their own setting.

Meanwhile, what is the privately owned TVA, TQS's competition, doing? (I am not taking into consideration here the CBC, a network mainly financed by the taxpayer.) At 12:13 p.m. the regions (Québec, Sherbrooke, Trois-Rivières and Saguenay) break away from the network to broadcast 13 minutes of local news that hasn't already been covered by the network, having escaped the attention of the national news directors. From 6:08 to 6:30 p.m., it does it again for 22 minutes. Including commercial breaks, this gives 35 minutes in total. When we compare apples with apples, the break away proposed by Remstar to provide an exclusively regional slant amounts to five minutes, six to seven times less (commercial breaks considered) than that offered by TVA.

Without minimizing the offer by Remstar, who's to say that TQS-Remstar will not try to thin down the sauce by presenting live news during the morning broadcast and then re-televising it in the afternoon and then presenting it in another form during the five-minute local news segment under the guise of the mandatory local break away at 5:45 p.m. At this point, the requirement in terms of the number of minutes is so weak that any hypothesis can be advanced.

Meanwhile, TVA's stations will continue to break away for 35 minutes of local coverage during the day, regardless of overall network needs. The offering by TVA in no way compares with that of Remstar. Not only does TVA offer 30- to 60-second insertions from the regions in its morning program and during its noontime, 6 p.m. and 10 p.m. newscasts but reports or direct broadcasts from the regions can also be part of the overall broadcast. In my comparison, I do not take all of these figures into account because the offerings by the two private networks are so asymmetrical that they are not even comparable.

When it comes time to renew its licences next year, why would TVA not be authorized to substantially revise downward its local news coverage, which now has to face competition from a quiz program on TQS at 6 p.m.?

After having granted the exception on the Canadian landscape for an over-the-air network broadcaster, how can the Commission subscribe to a proposal in which the regional content is so weak?

Since time is a rare commodity for any citizen, how can they count on a planned break away of only five minutes by TQS to adequately inform them about their local issues? How will they possibly be satisfied by such a minimal offering when we know that in Canada 44% of local news is obtained through television and that in the French-speaking market in Quebec, this percentage climbs to 50%? (Decima Research survey conducted in July 2007)

Are we not in the process of telling over-the-air broadcasters that the exclusively local news format is now a five-minute-a-day thing? Let me remind you that local news was a cornerstone of TQS, its added value in the diversity of the 26 over-the-air television stations across Quebec.

The cost of local coverage and the revenues from local advertising

During the publication of its major policy paper in 1999, *Building on success – A policy framework for Canadian Television*, Public Notice CRTC 1999-97, 11 June 1999, the Commission clearly affirmed the link between access to over-the-air broadcasters' local advertising and service to the local population. As stated in paragraph 45 of this policy, "[t]he Commission's policy of requiring the provision of local programming in order to access local advertising remains in effect."

Under the former TQS, the cost of category 1 news in 2007 represented 64% of the revenues from local advertising. In its new model, Remstar has proposed that the cost of this news, $3,250,000, would represent only a 12.4% slice off its $26,058,500 in advertising revenues that should be generated locally. Even expressed in percentages, the volume isn't there.

For example, the rival TVA network devotes more than half of its revenues from local advertising to produce category 1 news and thereby offers an information service to the general public. It goes without saying that as is the case with any other over-the-air broadcaster, TQS can continue to sell national advertising as a function of the viewership to which it has access in the regions. Local advertising only represents a third of Remstar's forecast advertising revenues.

Again, on a confidential basis, I obtained figures from other over-the-air broadcasters across Canada. No other broadcaster invests in category 1 news broadcasting production such a low proportion of its revenues from local sources. As if by magic, these percentages vary from 52 to 116% for the three major private networks – CTV, Global and TVA. In other words, they all invest in the production of category 1 news at least half of their revenues from local advertising. If we were only to compare the gross figures (which is impossible for me to do because of the confidential nature of the data), the comparison would be even more odious because the category 1 news offering by TQS II to do category 1 news is so ridiculously low given the revenues TQS generates locally.

The table below shows the overall market comparison for all private over-the-air broadcasting networks in the French-language market. It shows category 1 news production costs in terms of locally generated revenue, independent of national advertising.

Percentage of revenues from local advertising reinvested in category 1 news production

	TQS	TVA	TQS II
Sherbrooke	20%	24%	
Trois-Rivières	22%	31%	
Saguenay	30%	48%	
Rimouski	-	46%	
Montréal	86%	74%	
Québec	63%	34%	
Network	64%	52%	12.4%

TQS-Remstar indicated that it had no choice. Nevertheless, according to its proposed business model, it avoids reinvesting more than one-half of its locally generated revenues. All of the other private broadcasters in the Canadian system implicitly recognize this obligation, but not TQS-Remstar. And the Commission has just given its seal of approval to this choice. Never before has an over-the-air broadcaster in the system allocated to the production of category 1 news such a meagre part of its budget in relation to local revenues.

Finally, how can the Commission's position be justified? Only a few months ago, in Broadcasting Decision CRTC 2008-75 it refused an investment of $300 million in Toronto's HDTV Networks Incorporated (HDTV), a national, English-language high definition over-the-air digital television service, under the pretext that this service would not produce enough news and local programming! $300 million as opposed to $20 million and the Commission accepts the $20 million and refuses the $300-million deal! What's more, contrary to the TQS-Remstar case, HDTV committed to not solicit local advertising, but instead to offer two hours of local programming in each market per week!

In that decision, the Commission, which had refused to offer a transition period as it appears to be ready to do with TQS-Remstar, wrote the following:

> The Commission notes that local and/or regional reflection have traditionally been the key elements in distinguishing conventional OTA [over-the-air] television services from specialty services and considers that OTA television services are the cornerstone for the provision of local programming. As noted above, the applicant did modify its proposal so as to provide two hours per week of local programming in each of the eight markets it proposed to serve. However, the Commission notes that the average amount of local programming provided by existing television stations in these markets is more than 22 hours per week. Therefore, the Commission is of the view that HDTV Networks' revised local programming proposal would not be sufficient to serve the needs and interests of the markets it proposes to serve.

And what is Remstar offering? Not 22 hours, but 10 hours in Québec. Are we in the same country?

TQS-Remstar has had every opportunity to present a better project

It is not every day that the Commission must decide on the revitalization plan of a company that has lost $225 million over its 22 years of existence and that has before them a "saviour" who is ready to invest $20 million in the project. It is probably in this spirit that the Commission displayed a level of accommodation that is unusual, indeed exceptional, in the Canadian broadcasting system.

First, waiving the suggestions of various participants, the Commission not only favoured an accelerated procedure for the change in effective control of TQS but also agreed to the request by Remstar – which, by the way, has no experience in over-the-air broadcasting – for a renewal of the licences of TQS for a period of seven years, which will take it to 2015.

Next, at the beginning of June, the Commission held a hearing both in Québec and Montréal and rather than hand down its decision on the strength of a regular hearing, it proposed to Remstar that it return the following week with a new proposal for category 1 news.

The compromises made by the Commission to revitalize this company, in a technical bankruptcy situation, did not end there. Contrary to the usual rules, it accepted simple affidavits rather than a proper financial report. It removed Remstar's obligation to present a "demo" of its program of discussion and analysis by inserting category 1 news, a presentation that Remstar itself had accepted to do! And it opened the door to a renewal of the licences valid until 2015 while it still did not have the assurance that the former owners have fully respected the Canadian content requirements over the last seven years.

The Commission has of yet not received much feedback from other over-the-air broadcasting companies, whether private or public, but it is clear that this policy of making an exception for an ailing member of the Canadian broadcasting system runs the risk of prejudicing them.

So here we have the Commission wanting to impose on TQS-Remstar, as a condition of licence, half-hour slots of news on weekends. First the Commission is the regulator – and now, suddenly, it is the programmer! The idea is understandable: How can one seriously imagine serving the public without offering category 1 news on weekends? Nevertheless, an intervention of this kind goes well beyond the role of a public regulator, at least in view of the offerings from private broadcasters.

The Commission can use hearings to lead companies to reconsider programming proposals, to change formats or reallocate budgets, but, in the end, the regulator as regulator must look at their proposed programming and decide whether its service proposals are adequate.

In my first dissenting opinion last December, I voted against the decision of the Commission to impose on Corus Entertainment Inc. a music format at the time of an acquisition of assets, particularly since the music formula in question had led only to deficits (Broadcasting Decision CRTC 2007-435). In my dissenting opinion, I wrote – as if it were a premonition, it seems – a sentence which fits exactly the kind of case before the Commission today:

> [T]he Commission has, in acting thus, stepped beyond its regulatory role. It is creating a precedent by asking an important player in the market to adapt to a format that the player has no confidence in. This is no longer regulation; it is intervention. By acting in this manner, the Commission is significantly influencing the content, the concept of which the market has just soundly rejected.

An important actor in the system no longer wishing to produce news on the weekend is a clear indication of its total lack of interest in producing newscasts. After clearly indicating its dissatisfaction the first time at the hearing in Montréal and Québec on 2, 3 and 4 June 2008, the Commission had only to note the last proposal of TQS-Remstar on 12 June and to take a decision based on its historical policies.

By setting itself up as a “programmer,” the Commission runs the risk of becoming a party to formulas that will not stand the test of time, based on the news programming proposed by TQS-Remstar. Thus, the category 1 newscasts that the Commission wants to impose on weekends will have a total duration of 30 minutes per day on Saturdays and Sundays. How can one justify so much category 1 news on the weekend when there is such a lack of it during the week? Why be generous on the weekends by offering traditional news when current news – more often than not – slows down on weekends?

The Commission is not there to dictate choices in programming as fundamental as the hourly news schedules. By so doing, it risks undermining the business plan of the new company, which is already fragile since it does not forecast profits before 2014. From where I sit, this is a major shift for this regulator of commercial television stations.

Final considerations on the present case

The Commission, as we have seen, seems to want to avoid, at any price, the bankruptcy of an over-the-air broadcaster in Quebec. The intention is laudable. But no matter the results, it will be too high a price to pay.

Not only is the proposal by TQS-Remstar inferior to everything being done elsewhere in Canada – and I speak only of private broadcasters who march to the same rules of the market –, but we might ask whether, in the current situation, a third conventional network really has a place in Quebec.

In 1986 voices, including mine, were raised about the danger of establishing a third over-the-air television network. In my view, there was no market for a new commercial player. Since then, the figures have unfortunately proven this to be the case. TQS has shown itself to be a ship taking on water, listing from deficit to deficit, in spite of viewer levels that sometimes made its competitors, both public and private, break out in cold sweats. In fact, in all of its 22 years of existence, TQS has shown positive profit before interest and taxes (PBIT) margins in only four years, three of them from 2002 to 2004. It is undoubtedly one for the record books! What patient – and dare I say – reckless shareholders! Over time, the best talents have abandoned ship, no doubt foreseeing its imminent sinking.

During the 12 June hearing in the National Capital Region, TQS-Remstar produced figures suitable for management accounting that showed beyond any doubt that after allocating expenses for the network, local stations were running deficits. That’s all very well. But to return to the main point, I asked whether there was a single network in North America that covers its expenses for news coverage thanks only to its advertising revenues during newscasts. Obviously, the answer was no.

The French-language Quebec market is small. This statement has been repeated often in recent months: Canada represents the equivalent of the California market, and the Quebec French-language market is approximately the same size as that of San Francisco, with six million consumers.

Let us look at the situation, using various figures. According to the results of 2007, the 27 television stations in Ontario had advertising revenues of more than $900 million, while the 26 television stations in Quebec – yes, that is correct, 26 – drew less than $400 million. In terms of diversity of voices, when what we can afford is a Honda Civic, we don't try to buy a Mercedes… and even more so given that discretionary news channels now occupy an unprecedented place in the French-language market.

Even with the best intentions in the world, Remstar doesn't expect profits before 2014. So, since 1986, after nearly 30 years of over-the-air broadcasting, TQS will still show only marginal profitability, clearly below the PBIT margin of other over-the-air broadcasters who are themselves going through a turbulent period with the growth of Internet use by young people under 24 years of age and the multiplication of specialized channels.

Not only is it too high a price to pay for a public that wants to be informed, but the Remstar proposal seems to me very risky since there was no demonstration of enticing programming that could compete with the programming of other over-the-air broadcasters.

By way of comparison with the Ontario market (to look at that one only), there is an enormous deficit in terms of expected revenues. If, for 2007, we take for Quebec the total advertising revenues of $392 million for conventional television (local sales, national sales and payments to the networks) and we apply this sum to the total viewing level of 211 million hours, we get a ratio of $1.86 per weekly viewing hour; this compares with $2.74 in Ontario, with its $900 million of revenues and total viewing level of 329 million hours.

Quebec residents may very well watch more television than their Ontario counterparts, but they have not been able to entice their advertisers to invest more heavily in more televised advertising. To put it bluntly, the strength of the Quebec advertising market is 32% less than that of Ontario, whereas they both have to support nearly the same number of stations, 26 against 27. Do you realize that in 2007 the operational profits of Groupe TVA were only $50.3 million (which includes all of the profits from its analog and digital services, Sun TV, the TVA Productions inc. production house, the commercial production TVAccès and téléachat), as opposed to $59 million –$9 million more – for TSN, the only specialized sports service belonging to CTVglobemedia? This shows that, on a comparative basis, the gold mine is not there!

And the Commission, by its decision, is ready to make any compromise in order to keep on the airwaves a novice player that will likely continue to nibble away at the advertising market of the private and public sectors, which is already in bad shape because of the fragmentation of the viewing audiences. And this is the optimistic hypothesis! Would this be the right moment to wish the future creditors good luck? One fact remains: in a small market, like that of Quebec, the new TQS will face two other over-the-air broadcasters, whose financial means seem superior to those of Remstar, which offers from the very start five consecutive years of deficit.

How will TQS bring together its viewers and respect its Canadian content obligations if it does not offer newscasts? This is a fundamental question which remains unanswered after a four-day hearing.

As for the “analysis and interpretation” format proposed by TQS-Remstar to build a local programming different from category 1 news, I noted with interest the interventions of the Quebec Press Council and of Parti québécois spokespeople.

First, the Quebec Press Council stated the following through its president, Mr. Corriveau:

> [translation] […] what people have told us, at the end of the day, is that there is an unimaginable amount of information on the Internet which is not validated, sources that are barely credible, and then there is the whole question of editorial positions, even the positions of columnists, and the op-ed pieces. People have had enough, people tell us they don’t want to be told what to think; they want the tools to think for themselves. What they want are facts […]
>
> To conclude, let us say that the Press Council feels that the licence application, as presented by TQS, should be rejected by the Commission because it eliminates local news services, unless of course major changes are made. In our view, the replacement of news generated by information professionals, by opinion and citizen journalism, for which the format remains to be tested, does not constitute the diversity of voices in news.

Next, the Parti québécois, represented by its chairperson Ms. Monique Richard, stated on 3 June in Québec:

> [translation] […] a problem that is often seen in the regions is that the news has been transformed.
>
> Newscasts have become overheated opinion programs; we have talked about them, there’s been a lot of criticism about them, and I almost feel like saying that the commentary or the column – that’s a choice, but information – pure news, rigorous, high quality news - is recognized as a right in this society.
>
> The news has been replaced by commentary and I think that it is felt that the Canadian Radio-television and Telecommunications Commission should analyze each application for a transfer of licence bearing in mind the real work of regional journalism; this would be the guarantee of quality and rigour.

During the hearing, TQS focussed on the decreasing audience for French-language broadcasters as a whole. That may be. But I don’t believe that the situation is as dire as it would have us think, especially when we consider the production and rebroadcasting of news on the over-the-air broadcasters’ websites. Everything depends on the product. With regards to TQS, the public will come to gauge the amount of exclusive news that TQS will be able to produce with its new format and the choice it will make between unionized and independent journalists.

In fact, when the present administrators of TQS affirm that category 1 news is not as successful as it has been in recent years, they are referring mainly to the late evening newscasts. Actually, recent figures could show something completely different. For example, over the course of several weeks, the round-the-clock news channels LCN and RDI reached about 6% of market share. I may be wrong, but I know of no other place in the world where round-the-clock news channels pull in such viewership. Two weeks ago, the TVA network had, for the first time ever, beginning at 5 p.m., more than one million viewers during three back-to-back half hours. Who can do better in the Canadian broadcasting system? And Remstar – which didn't even bother to carry out a market study – has just claimed conclusively that news is less and less in public demand. Who should we believe – Remstar or audience ratings?

I could go on for several more pages to express my reasons for disassociating myself from the Commission and making my dissenting opinion known, but I believe my arguments are amply laid out.

I would like to finish with a small table. It revisits and illustrates the following: a) that TQS II spends three times less than the other large Canadian over-the-air broadcasters on the production of category 1 news as compared to its programming expenditures; b) that TQS II devotes four times less than other large over-the-air broadcasters on the production of category 1 news as compared to local advertising sales; and c) that even after five years of anticipated deficits, its first positive PBIT, anticipated for 2014, will only be 4.9%, compared to the weakest PBIT margins recorded by over-the-air broadcasters in 2006 and 2007, i.e. respectively, 4.2% and 5.2%. The average for conventional television over the last ten years has been 14.09%.

COMPARISON BETWEEN TQS-REMSTAR AND THE OTHER OVER-THE-AIR BROADCASTERS IN CANADA

	TQS II	OVER-THE-AIR TELEVISION IN CANADA
Percentage of category 1 news spending over total spending on programming	6.9%	23%
Percentage of category 1 news spending over local advertising revenues	12.4%	50%
Profits before interest and taxes (PBIT)	4.9% (2014)	4.2% (2006) 5.2% (2007)

The decisions that the Commission has made in the past and to which it has referred in this decision are sufficient grounds for refusing to grant TQS-Remstar licences for over-the-air television undertakings. The project that was presented has made quite a few people smile. Category 1 news is an integral part of the role of an over-the-air broadcaster. It is, beyond its civic duty, the price to pay for gaining free access to the local advertising market. Specialized channels do not have the same opportunity because they must rely on so-called national advertising and their subscriber fees to survive.

Must we point out that even for discretionary services, money doesn’t grow on trees? Consider as proof the 544 Category 2 services that the Commission has licensed but that to date have not seen the light of day.

It is true that some jobs would have been lost if TQS had not been rescued by Remstar. Losing a job is always tough, but as a regulator, I am skeptical of this revitalization plan and how it relates to the acts and regulations that we must follow. I must strive to protect the advances that have been made in the system, in particular those that relate to news for citizens.

Have we ever seen an over-the-air broadcaster present a business plan with such weak profitability after five years? For how many years will this exception hinder the Canadian system, of which we are the fiduciaries? Must we wait another 10, 15 or 20 years to put an end, together with the broadcaster, to an exception that risks bringing harm to the Canadian system?

If Remstar had used its millions of dollars to launch a discretionary television entertainment channel, how many jobs would have been created? How many jobs could have been saved from the ashes of TQS? For those investors that Quebec needs, a specialized channel would perhaps have been a more appropriate business model than the purchase of an over-the-air broadcaster, and Remstar would not have been compelled to offer category 1 news!

I believe that Remstar’s proposal for category 1 news is, both by the content and the budget required, a bargain basement proposal and a bad example for the Canadian broadcasting system. Finally, as a public regulator, I believe that it is neither our job nor our area of jurisdiction to micro-manage for companies. Our role is not to intervene in programming but to work with businesses so they can give the best of themselves and offer programs that respect the requirements of the *Broadcasting Act* and that conform to the past advances made by the Commission. After a long hearing, the Commission had only to judge the tree by its fruit, not by taking the place of the company in its programming.

In my view, Remstar simply does not have the wherewithal to be an over-the-air broadcaster. In spite of the warning reiterated several times in the Commission's decision, I fear that in awarding seven-year licences to TQS-Remstar, the Commission is sending a dangerous message to other players in the system. It is not with such weak category 1 news content that one can make the case for the diversity of voices.

For these reasons, I wish to disassociate myself from the decision by the Commission.