



Broadcasting Decision CRTC 2004-301

Ottawa, 30 July 2004

Fairchild Television Ltd.

Across Canada

Application 2003-1892-4

Public Hearing in the National Capital Region

17 May 2004

Talentvision – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Talentvision, from 1 September 2004 to 31 August 2008. This short-term renewal will permit the Commission to review, at an early date, the licensee's compliance with its condition of licence regarding the exhibition of Canadian programming.*

The details regarding the licensee's specific proposals for the new licence term, and the conditions of licence and other obligations determined by the Commission are set out below.

The application

1. The Commission received an application by Fairchild Television Ltd. for the renewal of the broadcasting licence for the national, ethnic specialty television service known as Talentvision.
2. The Commission did not receive any interventions in connection with this application.
3. On the basis of its review of this licence renewal application and the licensee's non-compliance with its conditions of licence pertaining to the exhibition of Canadian programming, the Commission **renews** the broadcasting licence for Talentvision for a term of four years only, from 1 September 2004 to 31 August 2008. The licence will be subject to the conditions specified therein and to the **conditions** set out in the appendix to this decision.
4. The licensee's non-compliance during the current licence term and the Commission's rationale for renewing Talentvision's licence for a short term are discussed below in the section entitled "Exhibition of Canadian programming."

Nature of service

5. Talentvision is a national ethnic specialty service having as its primary target audience the Mandarin-speaking communities of Canada. In addition, Talentvision offers programming in Vietnamese and Korean.

6. Talentvision's current conditions of licence pertaining to its nature of service state:

The licensee shall devote to the distribution of Type A ethnic programs, i.e. those in languages other than English, French or native Canadian, not less than 60% of the total time:

- i) during which programming is distributed on its undertaking, and
- ii) during the hours between 7:30 p.m. and 10:30 p.m.

The licensee shall ensure that 100% of the Type A ethnic programming distributed on Talentvision is limited to programs in Mandarin, Vietnamese and Korean languages.

7. The term Type A programming corresponds with the definitions found in the Commission's policy on ethnic broadcasting set out in *A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity*, Public Notice CRTC 1985-139, 4 July 1985. The Commission reviewed the policy in 1999 and published *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999 (the Ethnic Policy). The policy came into effect in 1999. Under the current policy, what was formerly referred to as Type A programming is now known as third-language programming.

8. As part of the licence renewal process, the licensee stated that it would accept a revision to its current condition of licence describing its nature of service so as to ensure consistency with the Ethnic Policy. Accordingly, the Commission has amended Talentvision's condition of licence 1 to read as follows:

The licensee shall provide a national ethnic specialty service, consisting of programming directed to the Mandarin, Vietnamese and Korean speaking communities of Canada. The licensee shall devote to the distribution of programming in the Mandarin, Vietnamese and Korean languages, not less than 60% of the total time:

- i) during which programming is distributed on its undertaking, and
- ii) during the hours between 7:30 p.m. and 10:30 p.m.

9. The full **condition of licence** on the nature of service is set out in the appendix to this decision.

Exhibition of Canadian programming

Talentvision's performance during the licence term

10. The Commission's usual practice is to define the broadcast day for the purposes of a specialty service's conditions of licence. However, during the current licence term, Talentvision's broadcast day was not defined for the purposes of its conditions of licence. Talentvision's overall Canadian content level was measured based on all programming broadcast on its service as opposed to the programming broadcast during a specific period, such as between 6 a.m. and midnight.
11. Talentvision was required, by condition of licence, to devote to the broadcast of Canadian programs a minimum of 31.5% of the total hours broadcast, and a minimum of 33% of the programming broadcast between 7:30 p.m. and 10:30 p.m. According to the Commission's records, which include the licensee's acknowledgement of its shortfall in this regard, Talentvision did not operate in compliance with the minimum requirements of its condition of licence in the each of the following broadcast years: 1999 to 2000, 2000 to 2001, and 2001 to 2002. Talentvision's shortfall was approximately 3% in each of these broadcast years. The Commission notes that Talentvision did meet its minimum Canadian content requirements during the 2002 to 2003 broadcast year, and that it exceeded the 33% minimum level of Canadian programming required by condition of licence between 7:30 p.m. and 10:30 p.m. in all broadcast years of the current licence term.
12. The licensee attributed its non-compliance to errors on the part of its logging staff in interpreting its condition of licence with respect to Canadian content. The licensee stated that its "logging staff erroneously interpreted this condition of licence to require that 31.5% of the total hours of broadcasting during the 18 hour broadcast day be comprised of Canadian content." According to the licensee, the reasons for this misinterpretation were two-fold. First, the *Television Broadcasting Regulations* (the Regulations) defines the broadcast day as "the period of up to 18 consecutive hours, beginning each day, not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee." Second, the conditions of licence for each of the other ethnic analog specialty services, namely its sister specialty service, Fairchild TV, South Asian Television, Telelatino and Odyssey Television¹ all provide for an 18-hour broadcast day. The licensee therefore incorrectly assumed that Talentvision also had an 18-hour day beginning at 6 a.m. and ending at midnight.
13. The licensee noted that it shares its logging staff with Fairchild TV, which, as noted above, has an 18-hour broadcast day. Although Talentvision did broadcast programming outside of the period between 6 a.m. and midnight, any programming broadcast outside of that period was not included in the licensee's calculations.

¹ In *Odyssey Television Network – Licence renewal*, Broadcasting Decision CRTC 2004-14, 21 January 2004, the Commission amended the definition of the broadcast day for the purposes of Odyssey's conditions of licence. Effective 1 September 2004, the broadcast day shall mean a 24-hour period commencing at 6 a.m., each day, or any other period approved by the Commission.

14. The licensee stated that during the 2002 to 2003 broadcast year it realized that it had misinterpreted its condition of licence and changed its logging practices to reflect the total hours of programming aired and not simply the total hours aired between 6 a.m. and midnight.

The Commission's analysis and determination

15. While the Commission is satisfied that the licensee's non-compliance during the past licence term was the result of a misinterpretation of its conditions of licence, the Commission is nonetheless concerned by the licensee's non-compliance with its conditions of licence relating to Canadian content. At the same time, the Commission considers that Talentvision recognizes the seriousness of the problems that existed in the management of its Canadian content, and that it is now taking all the necessary steps to ensure no future recurrence of non-compliance. Nevertheless, the Commission finds that Talentvision's licence should be renewed for a short term in order that the Commission may continue to monitor the licensee's performance, and to ensure that it has solved the problems that it has experienced with compliance. Accordingly, as noted above, the Commission has renewed Talentvision's licence for a term of only four years.
16. The Commission requires the licensee to take all the necessary measures to ensure compliance, to monitor closely the results of the measures it has put in place for this purpose, and to refine and improve upon them as necessary.
17. In order to provide more clarity for the licensee and for viewers with regard to Talentvision's Canadian programming obligations, the Commission has provided Talentvision with a 24-hour broadcast day on a going-forward basis. Effective 1 September 2004, the broadcast day shall mean a 24-hour period commencing at 6 a.m. each day, or any other period approved by the Commission.
18. Given the licensee's current financial capacity, the Commission has decided to maintain the present levels of Canadian programming required by condition of licence: a minimum of 31.5% of programming broadcast during the broadcast day and a minimum of 33% of the programming broadcast between 7:30 p.m. and 10:30 p.m. A **condition of licence** to this effect is set out in the appendix to this decision.

Expenditures on Canadian programming

19. During the current licence term, the licensee was required, by condition of licence, to expend on Canadian programs a minimum of 29% of the previous broadcast year's gross revenues.

20. The Commission notes that the licensee recorded negative profit before interest and tax (PBIT) in each year of Talentvision's licence term. Taking into account Talentvision's past financial performance, the Commission has determined that increases in the licensee's current requirements with respect to expenditures on Canadian programming are not warranted at this time. Accordingly, the Commission requires the licensee to maintain the level of its Canadian programming expenditures at a minimum of 29% of the previous broadcast year's gross revenues. A **condition of licence** to this effect is set out in the appendix to this decision.

Logging practices

21. In addition to the difficulties noted above with respect to its logging practices, the licensee experienced other significant logging problems during the current licence term. Specifically, it logged its third-language programming incorrectly. The licensee explained that the inconsistencies were a result of problems related to its computerized logging system and a misunderstanding regarding its logging requirements after the Ethnic Policy came into effect.
22. The Commission notes that, since being made aware of the logging problems, the licensee has corrected all the logs that had presented problems. In addition, it stated that it is in the process of migrating to a newer logging system.
23. The Commission recognizes the licensee's efforts to correct its logging problems. The Commission, nevertheless, reminds the licensee of the importance of keeping accurate logs and expects Talentvision to continue to monitor its logging practices to ensure that it meets the regulatory requirements at all times.

Canadian independent production

24. The licensee stated that because there are few Canadian independent producers who are able to provide programming in Mandarin or in the Vietnamese or Korean languages efficiently, affordably and of appropriate quality, it does not generally commission programming from the independent production sector.
25. The Commission, nevertheless, expects Talentvision to acquire programming from Canadian independent producers, wherever possible, during the new licence term.

Regional reflection and production

26. The Commission expects the licensee to ensure that the programming aired by Talentvision reflects all of Canada's regions. While the licensee has noted a scarcity of independent producers who can provide programming in Mandarin, Korean and Vietnamese, the Commission encourages Talentvision to provide opportunities for producers working outside the major production centres to supply programming for the service.

Cultural diversity

27. The licensee stated that it encourages its viewers to cherish their heritage, respect other cultures and embrace the Canadian lifestyle and that, as the licensee of an ethnic specialty service, it is sensitive to issues about accurate and fair portrayal of minority groups. It further indicated that it has made its production controller responsible for ensuring that producers exercise appropriate sensitivity when dealing with cultural, racial and heritage issues.
28. The Commission expects all broadcasters, including the licensees of ethnic services, to endeavour, through their programming and employment opportunities, to reflect Canada's ethno-cultural minorities, Aboriginal peoples as well as persons with disabilities. While recognizing that Talentvision's programming is targeted specifically to the Mandarin-speaking and Korean and Vietnamese communities, the Commission expects the licensee to ensure that the on-screen portrayal of all groups is accurate, fair and non-stereotypical.

Employment equity and on-air presence

29. Pursuant to section 5(4) of the *Broadcasting Act*, the Commission does not regulate or supervise matters concerning employment equity in relation to broadcasting undertakings with more than 100 employees, as they are subject to the *Employment Equity Act*. However, the Commission continues to regulate matters such as on-air presence.
30. With respect to on-air presence, the Commission expects the licensees of specialty television services to ensure that members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) are reflective of Canadian society, and that members of these groups are presented fairly and accurately. The Commission notes the initiatives that Talentvision has undertaken with regard to on-air representation including monitoring the hiring of persons from the designated groups.

Service to persons who are deaf or hard of hearing

31. The Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed captioned programming they broadcast. The Commission generally requires all broadcasters to offer a minimum percentage of closed captioned programs consistent with the nature of their services.
32. The licensee stated that it would be unable to offer closed captioning of its programming because close captioning software is not available for programming in the Mandarin, Korean and Vietnamese languages.

33. The Commission recognizes the challenges faced by the licensee in obtaining and/or providing closed captioning for its programming. The Commission, nevertheless, encourages the licensee to explore ways to improve accessibility for persons who are deaf or hard of hearing.

Service to persons who are blind or whose vision is impaired

34. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description and video description (also known as described video).
35. In its licence renewal application, the licensee stated that it does have the technical capability to provide described video via the secondary audio program. It explained, however, that, since it is not possible to acquire Mandarin-, Korean- and Vietnamese-language programming with description, any described video of Talentvision's programming would have to be provided in-house. The licensee submitted that providing described video in-house would not be financially feasible, given the size of the market.
36. With respect to audio description, the licensee stated that its policy is to attempt to provide voice-overs wherever there are visuals and that it is working with its on-air staff to ensure they describe visual material wherever possible. The Commission expects Talentvision to continue to provide audio description, wherever appropriate, and to take steps to make its programming more accessible to people who are blind or whose vision is impaired.

Programming across time zones

37. The licensee stated that, although it does not currently offer programs intended for adult audiences, it does have a policy in place to ensure that any future scheduling of such programs will respect the watershed hours of 9:00 p.m. to 6:00 a.m. in all time zones. The licensee noted that, since Talentvision's signal originates in Vancouver, the beginning of the watershed hour in Vancouver is midnight in Toronto. The policy stipulates that any programming intended for adult audiences must end by 2:00 a.m. in Vancouver to ensure that the end time of the watershed hours is respected across Canada.
38. The Commission expects the licensee to continue to demonstrate responsibility in the scheduling of its programming, taking into account time zone differences between where a program originates and where it is received.

Compliance with industry codes

39. In accordance with its usual practice for specialty television services, the Commission is imposing **conditions of licence** requiring the licensee to adhere to industry codes related to sex-role portrayal, advertising to children, and the depiction of violence in television programming.

Secretary General

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

Appendix to Broadcasting Decision CRTC 2004–301

Conditions of licence

1. The licensee shall provide a national ethnic specialty service, consisting of programming directed to the Mandarin, Vietnamese and Korean speaking communities of Canada. The licensee shall devote to the distribution of programming in the Mandarin, Vietnamese and Korean languages, not less than 60% of the total time:
 - i) during which programming is distributed on its undertaking, and
 - ii) during the hours between 7:30 p.m. and 10:30 p.m.
2. The licensee shall, in each broadcast year, devote to the distribution of feature films in English, French or a native Canadian language not more than 25% of the total programming time permitted for the distribution of programs in those languages.
3. The licensee shall devote to programming in Vietnamese no less than 15 hours per week, including 3 hours of locally-produced programming.
4. The licensee shall devote to the broadcast of Canadian programs not less than:
 - i) 33% of the time between 7:30 p.m. and 10:30 p.m.; and
 - ii) 31.5% of the broadcast day.
5. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993 and in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993:
 - (a) In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 29% of the gross revenues derived from the operation of this service during the previous broadcast year.
 - (b) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to five percent (5%) less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.

- (c) In each broadcast year of the licence term, where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
 - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
 - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
 - (d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
6. (a) During each clock hour, the licensee shall broadcast not more than twelve minutes of advertising material of which no more than six minutes shall be local commercial messages.
 - (b) Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours, if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.
 - (c) In addition to the twelve minutes of advertising material referred to in paragraph 6(a), the licensee may broadcast partisan political advertising during an election period.
7. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-Role Portrayal Code for Television and Radio Programming*, as amended from time to time and accepted by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council (CBSC).
 8. The licensee shall adhere to the provisions of the CAB's *Broadcast Code for Advertising to Children*, as amended from time to time and accepted by the Commission.

9. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the CAB's *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and accepted by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the CBSC.
10. The licensee shall prohibit the participation as a director or as an officer of the licensee company, of any director, officer, nominee, employee or representative of Television Broadcasts Limited, Condor Entertainment B.V., their affiliates or subsidiaries, or any person associated with these companies or with whom the licensee has entered into an agreement for the acquisition of programs.

For the purposes of these conditions, the terms "broadcast month", and "broadcast year" shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*.

"Broadcast" day shall mean a 24 hour day commencing at 6 a.m. each day, or any other period approved by the Commission.

"Clock hour" shall mean a period of 60 minutes beginning on each hour and ending immediately prior to the next hour.

"Expend on acquisition" shall mean:

- (a) expend to acquire exhibition rights for the licensed territory, excluding overhead costs;
- (b) expend on the following items associated with the production of a program:
 - talent fees (on air and other)
 - directly-attributable salaries and benefits
 - film and tape
 - studio sets, properties and other production materials
 - use of remote and other production facilities
 - delivery of remote programs to the satellite uplink or main studio; and
 - any other matter directly related to the production of a program; or
- (c) expend on the production of filler programming, as defined in section 2 of the *Pay Television Regulations, 1990*, including direct overhead costs.

"Expend on investment" shall mean expend for the purposes of an equity investment or an advance on account of an equity investment, but not overhead costs or interim financing by way of a loan.

“Semester” shall mean each six-month period beginning 1 March and 1 September.

“Officer” shall mean the chairperson, president, vice-president, secretary, treasurer, comptroller, general counsel, general manager, managing director or any individual who performs functions for the licensee similar to those normally performed by an individual occupying any such office, and each of the licensee's five highest paid employees, including the above.