



Broadcasting Decision CRTC 2004-11

Ottawa, 21 January 2004

Rogers SportsNet Inc.
Across Canada

*Application 2002-0974-3
Public Hearing in the National Capital Region
26 May 2003*

SportsNet – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as SportsNet, from 1 March 2004 to 31 August 2010. 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 Rogers SportsNet Inc. (Rogers) for the renewal of the broadcasting licence for the national, English-language specialty television service known as SportsNet.
2. SportsNet provides a regional sports service that serves the special interests of Canada's regions. The service operates on four distinct feeds.
3. The Commission's general analysis with respect to its consideration of this and other applications heard at the 26 May 2003 Public Hearing for the licence renewal of specialty television services is set out in *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004 (Public Notice 2004-2).
4. The Commission received 370 interventions that specifically supported SportsNet's licence renewal application and 30 interventions that opposed particular aspects of the application. The concerns raised by the opposing interveners are discussed in this decision.
5. Other interveners raised general concerns related to all the specialty television licence renewal applications considered as part of this public process. These concerns are discussed in Public Notice 2004-2.

6. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence for SportsNet, from 1 March 2004 to 31 August 2010.¹ The licence will be subject to the conditions specified therein and to the conditions set out in the appendix to this decision.
7. As part of its licence renewal application, Rogers requested an amendment to the condition of licence related to its subscriber fee in order to increase its monthly wholesale rate by \$0.29. The licensee also requested an amendment to its condition of licence pertaining to its nature of service in order to measure the amount of regional programming broadcast on each feed on a quarterly basis, instead of a weekly basis. The proposed amendments are discussed below.

Wholesale rate

8. The licensee requested an amendment to its conditions of licence in order to increase the maximum wholesale rate it charges each exhibitor of the service by \$0.29, from \$0.78 per subscriber per month to \$1.07 per subscriber per month, when the service is carried as part of the basic service.
9. At the public hearing, Rogers stated that it was proposing a wholesale rate increase of \$0.29 in order to achieve “parity” with the national English-language specialty television service known as The Sports Network (TSN). Rogers stated that approval of the proposed increase would make SportsNet's wholesale rate equivalent with that of TSN and enable SportsNet to achieve a reasonable profit.
10. In support of its request, Rogers contended that the authorization granted to TSN in 1997 to broadcast regional sports makes TSN directly competitive with SportsNet. According to Rogers, the 10% limit on regional programming imposed on TSN is not enough to prevent it from being directly competitive with SportsNet. Rogers stated that it must often bid against TSN for the broadcasting rights for the same sports programs, including the costly broadcasting rights for major sports events such as the National Basketball Association, the Canadian Football League and, most importantly, the National Hockey League.
11. Rogers submitted that TSN's ability to carry regional programming has created a competitive market in Canada for the broadcast rights for regional and national sports programming. Rogers claimed that TSN is better able to compete in this environment than SportsNet because TSN is more established, garners larger audiences, and has a higher wholesale rate.

¹ In *Administrative renewals*, Broadcasting Decision CRTC 2003-290, 21 July 2003, the Commission granted a six-month administrative renewal for SportsNet, from 1 September 2003 to 29 February 2004.

Interventions

12. Twenty-eight parties filed interventions opposing the proposed rate increase.
13. The Canadian Cable Television Association (CCTA) and Star Choice Television Network Incorporated (Star Choice), the licensee of a national direct-to-home (DTH) satellite distribution undertaking, alleged that Rogers had underestimated its ability to generate additional revenues from existing sources, such as subscriber fees and advertising revenues. Both the CCTA and Star Choice contended that SportsNet has adequate financial resources to provide a level of service that would be consistent with its mandate without an increase in its wholesale rate.
14. The Canadian Cable Systems Alliance (CCSA), which represents 90 small and medium-sized cable broadcasting distribution undertakings (BDUs) across Canada, expressed concern that approval of the proposed increase in SportsNet's wholesale rate would result in substantial new costs for its members without any benefit for their subscribers. According to the CCSA, increasing the price of the service would impede the ability of some cable BDUs to fulfil their obligation under section 3(t) of the *Broadcasting Act* (the Act) “to provide efficient delivery of programming at affordable rates” and could force some small cable BDUs to drop SportsNet from their line-up.
15. In individual interventions, numerous distributors or their representatives echoed the concerns raised by the CCTA and the CCSA. Many of these interveners emphasized that the cost of any rate increase must be absorbed by the distributor or the consumer. They also suggested that a rate increase might cause some subscribers to cancel their services. MTS Communications Inc., the licensee of a cable BDU serving Winnipeg and surrounding communities in Manitoba, contended that the proposed rate increase would have a negative impact on its operation as a new entrant in the marketplace, regardless of whether the cost was absorbed by the consumer or the distributor.
16. While Bell ExpressVu Inc., the General Partner of Bell ExpressVu Limited Partnership, did not oppose a rate increase for SportsNet, the intervener argued that any increase should be modest. It also questioned SportsNet's claim that it competes directly with TSN. The partners of Bell ExpressVu Limited Partnership are the licensee of a DTH distribution undertaking, a pay-per-view (PPV) distribution undertaking, a DTH PPV undertaking and a satellite relay distribution undertaking.

The licensee's reply

17. In response, the licensee disagreed with the interveners' contention that SportsNet enjoys adequate financial resources or that it has underestimated its potential to generate more revenues through additional subscriber and advertising revenues. The licensee maintained that it already pursues additional advertising revenues aggressively. It further affirmed that its projected depreciation expenses are consistent with its anticipated increase in fixed assets of between \$15 million and \$30 million. The licensee reiterated

that its maximum wholesale rate should be equivalent with that of TSN given that SportsNet competes directly with TSN in the acquisition of program rights, both regionally and nationally.

The Commission's analysis and determination

18. The Commission considers that the basic monthly rate for specialty television services should be as affordable as possible for subscribers. As explained in Public Notice 2004-2, the Commission considers that specialty services should examine all possible means to increase revenues, particularly advertising revenues, before applying for a rate increase. In addition, the Commission expects that any additional revenues generated from a rate increase will be allocated to programming that is consistent with the licensee's nature of service. The Commission does not consider that a rate increase should be granted to resolve a licensee's financial difficulties or to contribute directly to a licensee's profitability.
19. The Commission's policy has been not to license a specialty service that would be directly competitive with another specialty service in the type of programming it provides. This policy was extended to Category 1 digital specialty services in the *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000. The Commission's policy is intended to ensure programming diversity in accordance with the Act's objectives. In addition, by ensuring that there is no direct competition between Canadian specialty services, the policy provides some support to Canadian services to enable them to meet their programming commitments. Given the popularity and availability of sports programming, the Commission has in recent years taken a more flexible approach in its interpretation of the policy with respect to the sports genre than with some other genres. Nevertheless, in its decisions regarding the licensing of sports specialty television services, the Commission has maintained its policy of ensuring that the services are not directly competitive, but complementary.
20. The Commission does not agree with Rogers' contention that TSN now competes directly with SportsNet and that the one-per-genre policy for specialty television services is consequently no longer applicable in the sports genre. The Commission reminds Rogers that SportsNet is licensed primarily as a regional sports specialty service with a mandate to serve the special interests of the regions of Canada on four distinct feeds, and that TSN is licensed primarily as a national sports service with a limited capacity to broadcast, on occasion, regional programming. The conditions of licence imposed by the Commission on SportsNet and TSN, respectively, are intended to ensure that each service offers programming that is complementary to, rather than directly competitive with the other service.

21. With respect to Rogers' request to increase its wholesale rate, the Commission notes that the licensee did not propose to allocate the revenues that would be generated by the proposed increase to initiatives that would improve the programming offered by

SportsNet. Instead, the licensee's request was based primarily on making SportsNet's wholesale rate equal to that of TSN. The Commission finds that the licensee's argument that it needs to achieve parity with TSN does not justify an increase in SportsNet's wholesale rate.

22. In its evaluation of this request, the Commission has also taken into consideration the concerns expressed by the interveners with respect to the proposed wholesale rate increase and, in particular, its potential impact on subscribers.
23. Based on all of the foregoing, the Commission **denies** the licensee's request to increase the maximum wholesale rate. Accordingly, during the new licence term, the licensee is authorized to charge each exhibitor of the service a maximum wholesale rate of \$0.78 per subscriber per month, where the service is carried as part of the basic service. A **condition of licence** to this effect is set out in the appendix to this decision.

Nature of service

24. The current condition of licence defining SportsNet's nature of service includes a requirement that no more than 67% of the programs aired on each of the four regional feeds in each broadcast week be broadcast on any of the other feeds. This requirement is intended to ensure that each feed provides distinct programming that reflects the region it is authorized to serve.
25. In its licence renewal application, Rogers requested that this condition of licence be amended in order to allow it to measure the amount of regional programming broadcast on each feed on a quarterly basis. Rogers stated that the current requirement limits its ability to showcase special sports events such as national and international tournaments and competitions that are often played out over the course of a few days or weeks. The licensee submitted that the longer period of time allowed by a quarterly measurement would provide the flexibility for SportsNet to air programs on each feed that could not be offered in a weekly schedule, while still maintaining the required levels of regional programming.
26. As part of the licence renewal process, the Commission asked the licensee if it would accept alternative wording that would simplify and clarify this condition of licence. The Commission proposed the following wording:

At least 33% of the programming aired on each feed must be unique to that feed.

27. In response, the licensee stated that it would accept the proposed wording provided that it included a specified time period for the measurement of the regional programming broadcast on each feed. The licensee again proposed a quarterly measurement.
28. At the hearing, the Commission asked the licensee to describe how a requirement to measure SportsNet's regional programming on a monthly basis would affect its operations. The licensee responded that a monthly requirement would allow it enough flexibility to air most of the programming that it would like to broadcast. It also stated that such a requirement would not have impeded any of its programming plans during its current licence term.

Interventions

29. CTV Specialty Television Inc. (CTV) filed an intervention opposing the licensee's proposed amendment to SportsNet's condition of licence pertaining to its nature of service. CTV owns and controls TSN.
30. CTV argued that a weekly measurement of SportsNet's regional programming is the only way to ensure that SportsNet will be primarily a regionally-oriented service and, therefore, complementary with other specialty sports services in accordance with the Commission's one-per-genre policy. Moreover, CTV asserted that the proposed change in SportsNet's condition of licence would make the service directly competitive with TSN, contrary to the Commission's policy.
31. CTV also submitted that the term "regional programming" should be clarified in the context of this condition of licence. The intervener proposed that only programming that is broadcast by SportsNet on one of its four regional feeds, and not broadcast at any time on any of its other three regional feeds, should qualify as regional programming for the purposes of the condition of licence. According to CTV, clarifying the meaning of regional programming would ensure that SportsNet remains a primarily regionally-oriented service and that it will be complementary with TSN.

The licensee's reply

32. In response, the licensee stated that, if the proposed amendment were approved, it would continue to broadcast the same number of hours of regional programming as it currently offers. It emphasized that the proposed quarterly measurement would merely allow SportsNet more flexibility in the scheduling of its regional programming.
33. The licensee also reaffirmed its commitment to provide a service focused on regional programming. It stated that, during the current licence term, it often exceeded its minimum requirements for regional programming. At the hearing, the licensee stated that its regional programming is crucial to its audience and a key factor in making SportsNet the most popular sports service in British Columbia.

The Commission's analysis and determination

34. Having considered the arguments presented by both the licensee and the intervener, the Commission finds that some degree of flexibility is appropriate as long as SportsNet continues to offer regional programming on a regular basis on each feed.
35. Based on its analysis, the Commission is satisfied that, if the licensee's proposed amendment were approved, SportsNet would still be required to broadcast the same number of hours of unique regional programming overall. The Commission is concerned, however, that the proposed quarterly measurement would provide the licensee with undue latitude in the scheduling of the regional programming. Under the licensee's proposed approach, SportsNet could conceivably broadcast all of the unique regional programming on one or more feeds in one month, with the result that the licensee would not be required to offer any unique regional programming for the remaining two months of the quarter.
36. At the hearing, the licensee indicated that it would accept a monthly measurement for the purpose of this condition of licence as well as the alternative wording proposed by the Commission. Based on its analysis, the Commission considers that it is appropriate to impose a condition of licence requiring that at least 33% of the programming aired every month, on each feed, must be unique to that feed. The Commission is satisfied that a monthly measurement will provide SportsNet with some flexibility while still ensuring that regional programming is available to viewers on a consistent basis.
37. With respect to the concerns raised by CTV, the Commission is satisfied that the revised wording of the condition of licence clarifies the meaning of regional programming. By imposing a requirement that 33% of the programming be unique to each feed, the Commission is ensuring that SportsNet could not rebroadcast that programming on any other feed at another time. The Commission also considers that a monthly measurement is adequate to ensure that SportsNet's programming is primarily regionally-oriented and that it complements the programming offered by TSN.
38. The revised **condition of licence** is set out in the appendix to this decision.

Expenditures on, and exhibition of, Canadian programming

39. During the current licence term, the licensee has been required, by condition of licence, to expend on Canadian programs a minimum of 54% of the previous year's total revenues with respect to SportsNet. By condition of licence, the licensee must also devote not less than 60% of the broadcast year, and not less than 50% of the evening broadcast period to the exhibition of Canadian programs.

40. The Commission notes that the licensee recorded negative profit before interest and tax (PBIT) in every year of SportsNet's first licence term, except the 2000-2001 broadcast year. Taking into account SportsNet's past financial performance and consistent with the approach described in Public Notice 2004-2, the Commission has determined that increases in the licensee's current requirements with respect to expenditures on, and exhibition of, Canadian programming are not warranted at this time. Accordingly, the Commission requires the licensee to maintain the level of its Canadian programming expenditures at 54% of the previous year's gross revenues and to continue to devote at least 60% of the broadcast year and at least 50% of the evening broadcast period to the exhibition of Canadian programs.
41. As part of the licence renewal process, the licensee agreed to add the words "for each feed" to its condition of licence pertaining to the exhibition of Canadian programming. The Commission is satisfied that this addition clarifies the licensee's requirements in this regard.
42. The **conditions of licence** related to expenditures on, and exhibition, of Canadian programming are set out in the appendix to this decision.

Under-represented sports

43. In SportsNet's original licensing decision, *S3 – Approved*, Decision CRTC 96-601, 4 September 1996, the Commission noted the licensee's commitment to devote at least 27% of the programming broadcast on each feed to under-represented sports, such as university and amateur sports as well as sports featuring the participation of women and children.
44. In its application, the licensee emphasized its commitment to under-represented sports.
45. The Commission expects the licensee to continue to adhere to its commitment to devote at least 27% of programming aired on each feed during the new licence term to under-represented sports.

World Wrestling Entertainment programming

46. The Commission has received complaints in the past concerning excessively violent and sexually suggestive content presented on some World Wrestling Entertainment (WWE) programs. In view of the fact that SportsNet offers a WWE program, the Commission asked the licensee to explain its policies concerning this and other programming that may include violent or sexual content.
47. In response, Rogers acknowledged that it currently does not have its own internal guidelines concerning WWE programming or other controversial programming. Rogers made a commitment to develop such guidelines during the new licence term. Rogers

stated that it adheres to the Canadian Association of Broadcasters' guidelines on sex-role portrayal and the depiction of violence in programming. In accordance with these guidelines, the licensee stated that it schedules WWE programming after the watershed hour of 9:00 p.m.

48. The Commission expects the licensee to adhere to its commitment to develop its own guidelines during the new licence term. The Commission will request a copy of these guidelines if it receives any complaint during the new licence term about the program content broadcast by SportsNet.
49. As discussed in Public Notice 2004-2, the Commission further expects the licensee to demonstrate responsibility in the scheduling of all programming intended for adult audiences, taking into account time zone differences between where a program originates and where it is received.

Cultural diversity

50. As stated in Public Notice 2004-2, the Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect Canada's ethno-cultural minorities and Aboriginal peoples. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.
51. During the current licence term, Rogers filed a corporate cultural diversity plan with the Commission setting out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to the presence and portrayal of cultural diversity. The Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in its corporate cultural diversity plan. As discussed in Public Notice 2004-2, the Commission further expects the licensee to incorporate persons with disabilities into its cultural diversity corporate planning and to ensure that this is reflected in its annual reports on cultural diversity, beginning with the report to be filed in December 2004.

Employment equity and on-air presence

52. 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.
53. The Commission expects the licensees of specialty television services to ensure that the on-air presence of members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) is reflective of Canadian society, and that members of these groups are presented fairly and accurately. The Commission further expects Rogers to take steps during the new licence term to address any gaps in the on-air presence of members of the four designated groups on SportsNet.

Service to persons who are deaf or hard of hearing

54. 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. Most English-language services must close caption at least 90% of their programming.
55. In Decision 96-601, the Commission expected the licensee to close caption not less than 90% of all programming aired over the broadcast day by the end of the licence term. The licensee stated that it was unable to achieve a 90% level during the current licence term due to the cost of providing captioning for programming offered on four separate feeds and the limitations in its physical plant that prevent it from captioning more than two events simultaneously. It indicated that it currently close captions 80% of the programming offered in each broadcast day.
56. Rogers proposed to close caption a minimum of 80% of programming aired in each of the first three years of the new licence term, and to increase that level to 90% by year four and for the remainder of the licence term. According to Rogers, these proposed levels of closed captioning appropriately reflect the special circumstances of a sports service such as SportsNet. Rogers stated that it must provide live captioning for the many live sports events broadcast on its service and that live captioning is the most difficult and expensive form of captioning. The licensee added that it is also difficult to find captionists who do live captioning.
57. In the Commission's view, the cost of offering closed captioning is part of the expense of holding a broadcasting licence. Consistent with its general approach for English-language services, the Commission considers that it is appropriate to require the licensee to close caption 90% of all programming aired on SportsNet during the broadcast day.
58. The Commission, nevertheless, notes SportsNet's relatively poor financial position. Moreover, the Commission recognizes the challenges faced by the licensee in providing captioning for four distinct feeds as well as the difficulties associated with captioning live events, particularly sports. The Commission considers that requiring SportsNet to offer 90% closed captioning at the outset of the new licence term could have a negative impact on the service. The Commission has, therefore, decided to grant SportsNet an additional year to achieve this level of closed captioning and is imposing a **condition of licence** requiring the licensee to close caption not less than 90% of all programming aired during the broadcast day, beginning not later than 1 September 2005. The condition of licence is set out in the appendix to this decision.

59. The 90% obligation is based on the recognition that requiring 100% captioning at all times by condition of licence may not be reasonable. Thus, the obligation is designed to provide some flexibility to cover unforeseen circumstances (such as late delivery of captions, technical malfunctions, or the lack of availability of captions for programs acquired outside North America), or programming where captioning may not be feasible, such as third-language programming.
60. The Commission expects that, during the new licence term, the licensee will focus on improving the quality, reliability and accuracy of its closed captioning, and work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet their needs.

Service to persons who are blind or whose vision is impaired

61. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description² and video description (also known as described video).³
62. In its licence renewal application, the licensee stated that both of SportsNet's audio channels, including its secondary audio programming (SAP) channel, are being used for production of its programming in stereo. The licensee stated that providing described video would require the implementation of a separate, third audio channel at significant additional cost to SportsNet and the distributor of the service. Consequently, the licensee does not plan to make a third channel available for descriptive video during the new licence term. The licensee pointed out, however, that most of SportsNet's programming consists of broadcasts of live events, sports news, analysis and commentary and is, therefore, already described.
63. The Commission considers that sports services have a particular responsibility to ensure that their programming is as accessible as possible. The Commission expects that, during the new licence term, the licensee will:
 - provide audio description, wherever appropriate;
 - acquire and broadcast the described versions of a program, wherever possible; and
 - take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

² Audio description involves the provision of basic voice-overs of textual or graphic information displayed on the screen. A broadcaster providing audio description will, for example, not simply display sports scores on the screen, but also read them aloud so that people who are visually impaired can receive the information.

³ Video description, or described video, consists of narrative descriptions of a program's key visual elements so that people who are visually impaired are able to form a mental picture of what is occurring on the screen.

Compliance with industry codes

64. 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 2004-11

Conditions of licence

1. (a) The licensee shall provide a national English-language specialty television service, and shall draw its programming exclusively from the following categories, as set out in section 6 of Schedule I of the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 1 News
 - 2 (a) Analysis and interpretation
(b) Long-form documentaries
 - 3 Reporting and actualities
 - 5 (b) Informal education/Recreation and leisure
 - 6 (a) Professional sports
(b) Amateur sports
 - 7 Drama and comedy
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
- (b) The licensee shall provide programs dedicated to all aspects of sports, distributed using four discrete regional feeds.
- (c) Notwithstanding the above, material from category 7 shall be limited to non-dramatic feature length films about sports and sports personalities.
- (d) At least 33% of the programming broadcast on each of the four regional feeds, in each month, shall be unique to that feed.

The Commission reminds the licensee that regional programming must be logged under Program Class “REG”.

2. For each feed, in each broadcast year, the licensee shall devote to the distribution of Canadian programs not less than 60% of the broadcast day and not less than 50% of the evening broadcast period.
3. 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 54% 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.
4. (a) Subject to subsection (b), the licensee shall not distribute more than twelve (12) minutes of advertising material during each clock hour.
- (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) The licensee shall not broadcast any local advertising.
 - (d) In addition to the twelve minutes of advertising material referred to in subsection (a), the licensee may broadcast partisan political advertising during an election period.

5. The licensee shall charge each exhibitor of the service a maximum wholesale rate of \$0.78 per subscriber per month, where the service is carried as part of the basic service.
6. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast day, beginning no later than 1 September 2005.
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 approved 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 approved 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 approved 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.

For the purpose of these conditions of licence, the terms "broadcast day", "broadcast month", "broadcast year", "evening broadcast period" and "clock hour" shall have the same meaning as those set out in the *Television Broadcasting Regulations, 1987*.