



Broadcasting Decision CRTC 2004-6

Ottawa, 21 January 2004

The Comedy Network Inc.
Across Canada

*Application 2002-0896-9
Public Hearing in the National Capital Region
26 May 2003*

The Comedy Network – Licence renewal

In this decision, the Commission renews the broadcasting licence for the specialty television service known as The Comedy Network, 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 The Comedy Network Inc. (Comedy Network) for the renewal of the broadcasting licence for the national, English-language, specialty television service known as The Comedy Network (Comedy).
2. 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).
3. The Commission received 138 interventions specifically in support of Comedy's licence renewal application. Two interventions were submitted in opposition to Comedy Network's proposal to decrease the Canadian content on Comedy during the evening broadcast period. The concerns raised by interveners related specifically to this application are discussed in the various sections of this decision.
4. Other interveners raised general concerns related to all of the specialty television licence renewal applications considered as part of this public process. These concerns are discussed in Public Notice 2004-2.

5. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence for The Comedy Network, 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.
6. The licensee proposed to increase its exhibition of Canadian content measured over the entire day, while decreasing its Canadian content during the evening broadcast period, and requested the addition of category 7(g) Other drama to the list of categories from which Comedy may draw its programming.

Expenditures on, and exhibition of, Canadian programming

7. In Public Notice 2004-2, the Commission set out its approach to the broadcast of and investment in Canadian programming by specialty services. The Commission's general approach is to focus on augmenting financial contributions to the production of Canadian programming, rather than on increasing the overall amount of such programming to be exhibited.

Expenditures

8. In each year of the current licence term, Comedy Network has been required by condition of licence, to expend on Canadian programs a minimum of 41% of the previous year's total revenues with respect to Comedy.
9. At the public hearing, the licensee made a commitment to increase its Canadian programming expenditures (CPE) to 43% of the previous year's gross revenues, contingent upon the Commission approving its request to decrease its requirement for Canadian content during the evening broadcast period from 72% to 60%. The licensee's proposals related to the exhibition of Canadian programming are discussed and approved in part, later in this decision.
10. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been in the range of 20-25%. Taking this into account, and consistent with the approach described in Public Notice 2004-2, the Commission has determined that an increase of three percentage points is appropriate. Accordingly, the Commission is requiring the licensee, in each year of the licence term, to expend 44% of the previous year's gross revenues on Canadian programming, beginning 1 September 2004. A **condition of licence** to this effect is set out in the appendix to this decision.

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

Exhibition

11. Comedy Network is currently required to devote a minimum of 58% of the broadcast day, and 72% of the evening broadcast period, to the broadcast of Canadian programs.
12. As part of its renewal application, Comedy Network proposed to increase to 60% the amount of Canadian programming broadcast overall, and to decrease the Canadian programs broadcast in the evening broadcast period, from 72% to 60%.
13. In support of its request to decrease the Canadian content level in the evening broadcast period, the licensee stated that, industry-wide, the inventory of Canadian comedy programming has been depleted, due to increased competition with other specialty services. Comedy Network also stated that Canadian comedy series tend to have fewer episodes, making it more difficult to build viewer loyalty, and leading to decreasing audiences for series that are repeated multiple times. The licensee asserted that a decrease in the amount of Canadian content in the evening would allow it to focus on developing high-quality Canadian series with more original episodes. Higher-quality series would lead to increased advertising revenues, making it possible to improve quality and reduce repetition.
14. Interventions in opposition to the proposal to decrease the level of Canadian programming during the evening were submitted by Cogeco Cable Inc. (Cogeco) and the Canadian Film and Television Production Association (CFTPA). Cogeco stated that Comedy Network had not demonstrated that the quality of Comedy's programming would improve if Canadian content levels were decreased, and the CFTPA pointed out that Comedy Network committed to the current Canadian content levels in the context of a highly competitive process.
15. The Commission agrees that competition for the acquisition of comedy programming has increased, and that fewer programs and more repeats could lead to audience loss. The Commission also notes that Comedy currently has one of the highest requirements for Canadian content in the evening hours, and that, even if the proposed decrease were to be approved, the level would be higher than the average for all English-language analog specialty services (54%). The Commission is also of the view that ensuring that Canadian programming is of consistently high quality is of great importance. Given the increase in Comedy's required expenditures on Canadian programming set out above, as well as Comedy Network's proposal to increase its Canadian content over the broadcast day, the Commission considers that the level of Canadian content during the evening broadcast period on Comedy may be decreased with no serious implications. At the same time, the Commission is not convinced that the full reduction proposed by Comedy Network would be appropriate.

16. Accordingly, the Commission **approves in part** the licensee's requests. The Commission **approves** the licensee's request to increase Comedy's Canadian content requirement to 60% during the broadcast day. The Commission has, however, set the level for the evening broadcast period at 65%, instead of the 60% requested by the licensee. A **condition of licence** setting out the requirements for Canadian programming on Comedy is set out in the appendix to this decision.

Compliance

Exhibition of Canadian programming

17. As noted above, during the current licence term, the programming on Comedy has been subject to the condition that, at a minimum, 58% of the broadcast day be devoted to the broadcast of Canadian programs.
18. Analysis of Comedy's program logs for the 1998 broadcast year indicated that the total of Canadian programming during that period represented 54.43% of the broadcast day.
19. Comedy Network indicated that the apparent non-compliance with its Canadian content requirement was due to a staff error in calculating the Canadian programming requirement based on a 24-hour broadcast day instead of the authorized broadcast day of 18 hours.
20. The Commission notes the licensee's explanation, the fact that the licensee would have been in compliance if the broadcast day had been calculated as a 24-hour period, and that the non-compliance has not reoccurred.

Nature of service

21. Analysis of Comedy's program logs also indicated some evidence of non-compliance with its nature of service condition of licence. In both the 1998 and 1999 broadcast years, the licensee agreed that Comedy broadcast programs drawn from unauthorized categories.
22. In one instance, a short program was logged as Category 7(c) Specials, mini-series, or made-for-TV feature films. The program was broadcast a number of times during the 1998 broadcast year, representing a total of 26 minutes. The licensee indicated that its review of the program led it to believe that the show was within the nature of service for Comedy. It indicated, however, that it no longer carries the program.
23. In the 1998 and 1999 broadcast years, the program logs also indicated that Comedy's programming included 64 hours 22 minutes, and 24 hours, respectively, of material from Category 7(e) Animated television programs and films. The licensee explained that, since the launch of Comedy, it had been programming animated comedy series, logging them as category 7(b) Ongoing comedy series. The licensee explained further that in *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, the Commission redefined Category 7(b) as “ongoing comedy series (sitcoms)”.

24. Comedy Network subsequently applied for an amendment to Comedy’s nature of service condition of licence, to add category 7(e) to the list of authorized categories, to ensure logging compliance. The Commission approved that request in *Addition of animated programming*, Decision CRTC 2001-690, 9 November 2001 (Decision 2001-690). Decision 2001-690 also sets out a 10% limit on the use of material from category 7(e) during the broadcast day, and a limit of one hour during the period 7:00 p.m. to 11:00 p.m. daily.
25. The Commission notes the licensee’s explanations and the steps taken to correct all of the compliance issues noted above.
26. In a related matter, the Commission notes that the list of authorized categories from which Comedy’s programming may be drawn does not currently include Category 10 Game shows, although two programs, *Win Ben Stein’s Money* and *Beat the Geeks* appear on the service’s program logs. While the licensee has logged these programs as other than game shows, the Commission is of the view that they are more properly described as material from Category 10. However, the Commission is of the view that the programs in question are not inconsistent with Comedy’s nature of service. Accordingly, it has added Category 10 to the list of authorized categories from which Comedy’s programming may be drawn.

Nature of service

Nature of service description

27. During the licence renewal process, the Commission asked Comedy Network to propose a description that would more closely describe the nature of Comedy’s service and that the licensee could accept as a condition of licence.
28. In response to the Commission’s request, Comedy Network proposed the following description:

The Comedy Network is a national English-language specialty service devoted to comedy programs. The programs broadcast on the service will reflect comedy in its various forms and formats.
29. The Commission is satisfied that the proposed definition serves to clarify the existing service offered by the licensee. The Commission therefore amends the condition of licence describing Comedy’s nature of service.

Addition of programming categories

30. As part of its licence renewal application, the licensee requested an amendment to the current condition of licence describing its nature of service in order to add program category 7(g) Other drama to the list of categories from which it may draw its programming.
31. The licensee made its request after becoming aware that while most episodes of the program *Comedy Now* are drawn from Category 7(f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy, some have been characterized as Category 7(g).
32. The Commission notes that no interventions were submitted in opposition to this proposal, and that category 7(g) is a catch-all for drama programs (such as puppet shows) which do not fall under any other category. It also notes that, if the request were to be approved, any programs broadcast from category 7(g) would have to be consistent with Comedy's nature of service.
33. The Commission is of the view that the addition of category 7(g) does not raise concerns about the integrity of the nature of Comedy's service. Accordingly, the Commission **approves** the licensee's request to add program category 7(g) to the list of categories from which Comedy may draw its programming.
34. The **condition of licence** describing the nature of Comedy's service, reflecting all of the amendments approved by the Commission, is set out in the appendix to this decision.

Canadian independent production

35. In *The Comedy Network – Approved*, Decision CRTC 96-596, 4 September 1996, the Commission noted the commitment that 75% of Comedy's expenditures on original Canadian production would go to the independent production community.
36. In its renewal application, the licensee stated that its original commitment had been fulfilled. It added that, over the current licence term, it had commissioned or acquired 54 programs from Canadian independent producers. Comedy Network added that it would be willing to accept as a condition of licence, the requirement that it direct 75% of all expenditures for original Canadian production to independent producers.
37. In its intervention, the CFTPA suggested that, rather than a percentage of expenditures, 75% of all original Canadian programming broadcast on Comedy should be acquired from independent producers.
38. The Commission is satisfied with the licensee's level of commitment to the use of independent production, and expects Comedy Network to fulfil its commitment that 75% of expenditures on original Canadian production will be directed to non-related Canadian producers.

Regional reflection and production

39. Comedy Network stated that it has encouraged submissions, commissioned programs and engaged talent from across the country. It noted that programs on Comedy have been commissioned from producers in various smaller centres, including Ottawa, Halifax, Victoria, Edmonton and Calgary. It further stated that it is conscious of the need to include regional origin and reflection, in the projects that it develops and the programming that it acquires.
40. The Commission expects the licensee to continue to ensure that the programming aired by Comedy reflects all of Canada's regions. The Commission also expects the licensee to continue to provide opportunities for producers working outside the major production centres to supply programming for the service.

Cultural diversity

41. 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.
42. The Commission notes that Comedy is subject to CTV Inc.'s corporate cultural diversity plan, which sets out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to presence and portrayal of cultural diversity. The Commission expects the licensee to continue to contribute to cultural diversity, to ensure that the programming broadcast on Comedy continues to showcase a diverse range of talent, and to implement the commitments set out in its corporate cultural diversity plan. The Commission notes that CTV Inc.'s corporate cultural diversity plan currently encompasses persons with disabilities. As discussed in Public Notice 2004-2, the Commission expects the licensee to continue 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

43. 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.

44. 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.
45. The Commission further expects Comedy Network to take steps during the new licence term to address any gap in the on-air presence of members of the four designated groups on Comedy.

Service to persons who are deaf or hard of hearing

46. 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.
47. In the present case, the licensee made a commitment to close caption 90% of all programming broadcast on Comedy during each broadcast day of the new licence term.
48. Consistent with this commitment and with the Commission's general approach for English-language services, the Commission is imposing a **condition of licence** requiring the licensee to close caption 90% of all programming aired during the broadcast day, beginning not later than 1 September 2004. The condition of licence is set out in the appendix to this decision.
49. 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.
50. 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

51. 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
52. In its renewal application, Comedy Network stated that Comedy is not currently technically capable of delivering video description via a SAP channel. It stated that such capability would require a capital upgrade to its master control. The licensee further stated that it would therefore require some time before it would be able to offer described programming. At the same time, Comedy Network stated that it would attempt to acquire described versions of programs wherever possible, and to provide the described video once the service is technically capable of doing so.
53. With respect to audio description, Comedy Network stated that all programming advisory notices, and all still image elements posted on the screen, such as phone numbers, stock information or weather information, are provided both in voice-over and in a visual form.
54. At the hearing, the licensee stated that, if the technical issues surrounding the distribution of described programming are resolved, it would commit to the provision of two hours of described programming each week in the first two years of the licence term, increasing to three hours each week in September 2005, and to four hours in September 2007.
55. Consistent with this commitment and with its approach set out in Public Notice 2004-2, and given the nature of the service and the programming it provides, the Commission has determined that it would be appropriate to require the licensee to provide a minimum of two hours of described video programming each week, beginning not later than 1 September 2005, and to increase that amount to a minimum of three hours each week, beginning not later than 1 September 2008. A **condition of licence** to this effect is set out in the appendix to this decision.
56. The Commission further expects that, during the new licence term, the licensee will:
 - provide audio description wherever appropriate;
 - acquire and broadcast the described version of a program wherever possible; and

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.

- take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

Programming delivered across time zones

57. The Commission notes that the licensee already provides a time-shifted signal. Nevertheless, as discussed in Public Notice 2004-2, the Commission expects the licensee to continue to demonstrate responsibility in the scheduling of programming intended for adult audiences, taking into account time zone differences between where the program originates and where it is received.

Compliance with industry codes

58. 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 2004-6

Conditions of licence

1. (a) The licensee shall provide a national English-language specialty television service devoted to comedy programs. The programs broadcast on the service will reflect comedy in its various forms and formats.
 - (b) The programming must be drawn 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:
 - 7 (b) Ongoing comedy series (sitcoms)
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy
 - (g) Other drama
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
- (c) All programming drawn from category 7(e) must be targeted strictly to adults.
 - (d) Programming drawn from category 7(e) will be limited to 10% of the licensee's broadcast day, and to no more than one hour during the period from 7:00 p.m. to 11:00 p.m.
2. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 60% of the broadcast day, and not less than 65% 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 the broadcast year ending 31 August 2004, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 41% of the gross revenues derived from the operation of this service during the previous broadcast year.
 - (b) In the broadcast year beginning 1 September 2004, and in each subsequent broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 44% of the gross revenues derived from the operation of this service during the previous broadcast year.
 - (c) 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.
 - (d) 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.
 - (e) Notwithstanding paragraphs (c) and (d) 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 distribute any paid advertising material other than paid national 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 provide closed captioning for not less than 90% of all programs aired during the broadcast day, beginning not later than 1 September 2004.
 6. In each broadcast year of the licence term, the licensee shall provide a minimum of two hours of described video programming during each broadcast week, beginning not later than 1 September 2005, increasing to a minimum of three hours beginning not later than 1 September 2008. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service.
 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, the terms "broadcast day", "broadcast month", "broadcast year", "clock hour" and "evening broadcast period" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*; the term "broadcast week" shall have the same meaning as that set out in the *Radio Regulations, 1986*; and "paid national advertising" shall mean advertising material as defined in the *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service.