



Broadcasting Decision CRTC 2004-13

Ottawa, 21 January 2004

History Television Inc.
Across Canada

*Application 2002-0889-4
Public Hearing in the National Capital Region
26 May 2003*

History Television – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as History Television, 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 History Television Inc. (History TV) for the renewal of the broadcasting licence for the national, English-language, specialty television service known as History Television (History).
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 38 interventions specifically in support of History's licence renewal application. One intervention was submitted in opposition to the licensee's proposal to add game shows to History's programming. The concern raised by the intervener is discussed below.
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 History Television, 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 requested the renewal of the licence for History under the same terms and conditions as the existing licence, with the exception of the addition of category 10 Game shows to the list of categories from which History may draw its programming.

Expenditures on, and exhibition of, Canadian programming

7. In Public Notice 2004-2, the Commission set out its general approach to the broadcast of, and expenditure on, Canadian programming by specialty services which, at this time, favours augmenting expenditures over increasing exhibition time. In the present case, however, because History's Canadian content levels are relatively low compared to other specialty services, the Commission is of the view that increases in both the expenditure on, and the broadcast of, Canadian programs should be considered.

Expenditures

8. In each year of the current licence term, History TV has been required by condition of licence, to expend a minimum of 34% of the previous year's gross revenues on Canadian programs.
9. Following discussions at the public hearing, History TV offered to increase its Canadian programming expenditures (CPE) by one percentage point in each year of the new licence term, to a maximum CPE of 40%. This proposal was to be contingent upon History maintaining an annual subscriber level of at least 4.8 million, a level reached in 2000. In any year that the subscriber level fell below 4.8 million, the licensee proposed that the previous year's CPE level would be maintained until the subscriber level again exceeded 4.8 million.
10. In support of its proposal, History TV stated that:

...the sliding scale, tied to our paid subscriber numbers will allow us to ensure that further increases of our Canadian content expenditures will not occur in an environment where our subscriber base is being significantly eroded and as such the business cannot sustain the additional commitment.
11. The Commission notes that History's current CPE requirement is one of the lowest of the specialty services licensed in 1996. At the same time, History has been one of the most profitable of that group, exceeding revenue projections by \$46 million over the licence term, even though expenses have exceeded projections by only \$7 million over the same period.

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

12. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been over 40%. Taking this into account, and consistent with the approach described in Public Notice 2004-2, the Commission has determined that an increase of seven percentage points is appropriate. Accordingly, the Commission is requiring the licensee in each year of the licence term, to expend 41% 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.

Exhibition

13. The overall requirement for the exhibition of Canadian programs on History during the current licence term has been based on a ramp-up from 30% to 50%, increased over the current licence term as subscriber levels rose. History is also required to broadcast a Canadian content level of 33 1/3% during the evening broadcast period. These levels are lower than the average exhibition of Canadian programs on other specialty services.
14. In its intervention, the Canadian Film and Television Production Association (CFTPA) recommended that History's overall Canadian content requirement be 50%, and that it should no longer be contingent upon subscriber levels in the new licence term.
15. With respect to the level of Canadian programming during the evening broadcast period, History TV initially opposed any increase, stating that History's mandate is to provide Canadians with a window on world history, and noting the significant cost of historical dramas and re-creations. However, following discussions at the public hearing, and while indicating a reluctance to alter its balance of foreign and Canadian programming, the licensee proposed to increase the Canadian programming on History during the evening broadcast period to 40%. The licensee stated the following:

We would be very reluctant to go beyond this level as we would be concerned about the audience impact and our ability to fulfil our mandate to bring the world's history to Canadian audiences.

16. Consistent with the licensee's commitments, the Commission has decided that it is appropriate to increase History's Canadian content requirements to a minimum of 50% during the broadcast day and a minimum of 40% during the evening broadcast period. A **condition of licence** to this effect is set out in the appendix to this decision.

Nature of service

17. As part of its licence renewal application, the licensee requested an amendment to the current condition of licence describing its nature of service to add program category 10 Game shows to the list of categories from which it may draw its programming. History TV proposed that not more than 5% of each broadcast year be devoted to the broadcast of game shows.

18. In support of its request, the licensee stated:

...History Television would foresee running a weekly quiz show that challenges contestants on their knowledge of Canadian and international history. Contestants would be recruited from across the country and questions would cover a range of historical and cultural issues and events that have played a role in forming this country.

19. In an intervention, Michael Warnock Shaw expressed opposition to the licensee's proposal to add game shows to the programming offered by History, arguing that game shows have little relevance to history.
20. The Commission notes that History TV has specified that any game shows to be broadcast would be devoted to the subject of Canadian and international history, and that the ability to broadcast such material would not enable History to be directly competitive with any other Canadian specialty service, since the licensee would continue to be constrained by its nature of service.
21. The Commission notes in addition that History TV proposed that no more than 5% of each broadcast year be devoted to material drawn from program category 10.
22. Accordingly, the Commission **approves** the licensee's request and adds program category 10 to the list of categories from which History may draw its programming. The **condition of licence** on the nature of service is set out in the appendix to this decision.

Canadian independent production

23. In *The History and Entertainment Network – Approved*, Decision CRTC 96-599, 4 September 1996, and in Decision CRTC 99-106, 20 May 1999, which approved changes in the ownership of History TV's parent company, the Commission noted the licensee's statements that programming originally produced by companies affiliated with the licensee would account for less than 5% of all programming on History.
24. In the above-noted decisions, the Commission also set out the expectation that the licensee broadcast at least 215 hours per year of independently-produced Canadian programs in the history genre each year. As part of this renewal process, History TV indicated that it would be willing to carry that expectation forward in the new licence term.
25. Also, as set out in its renewal application, History TV indicated that it would be willing to accept an expectation that a minimum of 75% of all Canadian programs broadcast would be produced by independent production companies.

26. Consistent with the licensee's commitment and with the discussion in Public Notice 2004-2, the Commission considers that it is reasonable to expect History TV, for the duration of the new licence term, to ensure that a minimum of 75% of all original, first-run Canadian programming broadcast on History is acquired from non-related producers.
27. The Commission further notes the licensee's commitment to continue to broadcast 215 hours of independently-produced Canadian programs in the history genre each year.

Regional reflection and production

28. History TV stated that it is committed to providing viewers with programming that reflects all regions of Canada, and that it has worked extensively with producers to find regional stories that will appeal to viewers across the country. The licensee also stated that, since the launch of History, independent producers from outside Toronto, Montréal and Vancouver have received approximately 23% of all licence fees paid, and have created approximately 170 hours of programming for History.
29. The Commission notes the licensee's efforts to ensure that the programming aired by History reflects all Canada's regions, and expects it to continue to pursue those efforts. 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

30. 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 licensees to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.
31. Although History TV has not yet filed with the Commission a cultural diversity corporate plan, in its renewal application it included a document entitled *Alliance Atlantis Broadcasting Cultural Diversity Best Practices*. History TV stated that the service focuses on programming created by film-makers of varied cultures and backgrounds, bringing the struggles and successes of their people to the screen. History TV also stated that it recognizes that Canada's history does not stop at its borders, and thus broadcasts stories about Canadians interacting with the rest of the world, and the influence Canadians have upon events in the rest of the world.
32. The Commission notes the initiatives that the licensee has taken in this regard during the current licence term. As set out in Public Notice 2004-2, the Commission expects the licensee to file a corporate plan on cultural diversity, within three months of the date of this decision, and to provide annual reports on its progress in achieving the plan's objectives. Such reports should be filed no later than 31 December of each year of the new licence term, beginning December 2005.

33. 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.

Employment equity and on-air presence

34. 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.
35. 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.
36. The Commission notes that History does not employ on-air staff.

Service to persons who are deaf or hard of hearing

37. 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.
38. In the present case, the licensee made a commitment to close caption 90% of all programming broadcast on History during each broadcast day of the new licence term.
39. 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.
40. 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.

41. 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

42. 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
43. In its renewal application, the licensee indicated that History is now technically capable of providing described video via a SAP channel. It made the commitment that, provided all issues related to the universal distribution of described video can be resolved, History would provide two hours of described video per month in the first three years of the licence term, increasing to four hours per month in the seventh year of the licence term.
44. Nevertheless, consistent with the 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 more appropriate to require the licensee to provide a minimum of two hours of described video programming each week, beginning 1 September 2005, and to increase that amount to a minimum of three hours each week, beginning 1 September 2008. A **condition of licence** to this effect is set out in the appendix to this decision.
45. The Commission further 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.

Programming delivered across time zones

46. As discussed in Public Notice 2004-2, the Commission expects the licensee 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.

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

47. 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 2004-13

Conditions of licence

1. (a) The licensee shall provide a national English-language specialty service consisting of historical documentaries, movies, mini-series and history programs which embrace both current events and past history, with a special emphasis on documentary and dramatic programs related to Canada's past.
 - (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:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 7 Drama and comedy
 - (a) Ongoing dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy
 - (g) Other drama
 - 10 Game shows
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
 - (c) During each broadcast week, the licensee shall not broadcast more than 56 hours of feature films, all of which are to be based on historical themes.
 - (d) The licensee shall not broadcast more than one two-hour movie during the evening broadcast period.
2. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 50% of the broadcast day, and not less than 40% 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 34% 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 41% 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 charge each exhibitor of this service a maximum monthly wholesale rate of \$0.25 per subscriber, 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 not later than 1 September 2004.
7. 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.
8. 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).
9. 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.
10. 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.