



Broadcasting Decision CRTC 2004-22

Ottawa, 21 January 2004

Astral Broadcasting Group Inc.
Across Canada

*Application 2002-0887-8
Public Hearing in the National Capital Region
26 May 2003*

Canal Vie – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Canal Vie, 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 Astral Broadcasting Group Inc. (Astral) for the renewal of the broadcasting licence for the national, French-language specialty television service known as Canal Vie.
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 seven interventions concerning Canal Vie's licence renewal application. Six interveners opposed the addition of program category 7(a) Ongoing dramatic series. The concerns raised by the interveners related to this application specifically are 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 CRTC 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 Canal Vie, 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. As part of its licence renewal application, the licensee proposed an amendment to the condition of licence describing its nature of service. The proposed amendment is discussed below.

Nature of service

7. As part of its licence renewal application, the licensee requested an amendment to the current condition of licence pertaining to its nature of service in order to add program category 7(a) to the list of categories from which it may draw programming.
8. According to the licensee, the proposed amendment would enable it to broaden its supply of dramatic programming dealing with the network's themes: wellness, health, lifestyle and social life, with an accent on human relations. The licensee added that it would thus be able to continue to meet the demand that its target audience has clearly expressed for this type of programming.

Interventions

9. La Société de télédiffusion du Québec (Télé-Québec), Union des Artistes (UDA), Société des auteurs de radio, télévision et cinéma (SARTEC), the Canadian Broadcasting Corporation (CBC), ARTV inc. and TQS inc. opposed the amendment requested by the licensee. For its part, Association des producteurs de films et de télévision du Québec (APFTQ) stated that it was not opposed to this amendment. The opposing interveners were particularly concerned that the proposed change would enable Canal Vie to compete with all of the other French-language services, because of its broadened nature of service. They also pointed out that the licensee had not specified any maximum percentage of programs to be drawn from the proposed category.

The licensee's response

10. In response to the opposing interventions, the licensee stated that in 1996 Canal Vie was authorized to distribute information and entertainment programs, from the outset, including dramatic programs that were relevant to the nature of its service and that reflected the themes to which it was dedicated. The licensee added that it would accept a condition of licence limiting the programs to be drawn from category 7(a) to no more than 15% of the broadcast day, and no more than 15% of the evening broadcast period, on an annual basis.

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

The Commission's analysis and determination

11. The description of the nature of the service to be offered by Canal Vie is as follows:

The licensee shall provide a national French-language specialty service that is dedicated to information and entertainment programs focussed on three very specific subjects:

 - lifestyle (human relations, social and interpersonal);
 - health (physical and mental); and
 - outdoor activities for families or individuals.
12. As some of the interveners pointed out, the Commission notes that the description of Canal Vie's nature of service is relatively broad, and its "lifestyles" theme could very readily include the vast majority of dramatic series that compose category 7(a). In this regard, the Commission notes that the licensee's proposal to limit the broadcasting of such programs to 15% of the broadcast day and 15% of the evening broadcast period could allow it to broadcast up to 3.6 hours of category 7(a) programming in each 24-hour period, including one hour during the evening broadcast period. Moreover, if this calculation were done on an annual basis, as the licensee proposed, it could allow the licensee to concentrate its airing of category 7(a) programs at times of the year that are critical to French-language conventional television broadcasters, and thus compete with them.
13. Given that Canal Vie is already authorized to broadcast programs in categories 7(c) Specials, mini-series or made-for-TV feature films and 7(d) Feature films/Theatrical releases, the Commission **approves** the proposed addition of category 7(a). However, to minimize the potential competition with conventional broadcasters, the licensee shall, as a **condition of licence**, devote no more than 5% of the broadcast day and no more than 5% of the evening broadcast period to programs from category 7(a) in each broadcast week.
14. The condition of licence on the nature of service is set out in the appendix to this decision.

Canadian programming expenditures

15. The licensee did not propose any change in the expenditures that it must devote to Canadian programming. It expects to expend on Canadian programming 45% of the gross revenues derived from the operation of this service during the previous broadcast year.

16. In response to questioning by the Commission, the licensee submitted that it would not be appropriate to increase the percentage of gross revenues that Canal Vie must expend on Canadian programming, with the sole purpose of establishing a requirement that would be closer to the industry average. In the licensee's view, the percentage of revenues devoted to Canadian programming is only one of many elements of the concept and the business plan accepted by the Commission when it decided to issue a licence to a Canadian specialty service, following a competitive process.
17. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been in the range of 35% to 39%. Taking this into account and consistent with the approach described in Public Notice 2004-2, the Commission has determined that an increase of six percentage points in Canal Vie's Canadian programming expenditure level is appropriate. Accordingly, the Commission is requiring the licensee, in each year of the licence term, to expend 51% 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.

Regional reflection and production

18. In accordance with its commitment, Canal Vie has devoted at least 80% of its hours of original first-run Canadian programming to programs produced by the independent production industry. The Commission expects the licensee to continue to abide by its commitment in this regard.
19. The Commission expects the licensee to ensure that the programming aired by Canal Vie reflects all of Canada's regions. The Commission also expects the licensee to provide opportunities for producers working outside the major production centres to supply programming for the service.

Cultural diversity

20. 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.
21. The licensee stated that, like Astral's other services, Canal Vie is careful to reflect society's changing ethno-cultural makeup, not only in terms of the subjects that Canal Vie addresses, but also in its choice of program hosts, announcers, and resource persons. The licensee added that the service also takes care to ensure appropriate representation of, and interviews with, members of many ethnic and cultural groups in its various documentary and magazine programs.

22. The Commission notes the initiatives that the licensee has undertaken in this regard. During the current licence term, the licensee 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 presence and portrayal of cultural diversity.
23. 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

24. 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.
25. 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.
26. In this regard, the licensee stated that it does not have any on-air employees. The licensee, nevertheless, added that Canal Vie gives high priority to representing persons of all races in its original productions.

Service to persons who are deaf or hard of hearing

27. 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. The closed captioning requirement currently imposed on all French-language services is less than the 90% level generally required of English-language services. This is in recognition of the significantly greater challenges involved in captioning French-language programming.
28. In the context of Canal Vie's licence renewal application, the licensee stated that it was prepared to commit, as a condition of licence, to gradually increase the percentage of all its programming that will be closed captioned, so as to achieve a captioning level of 65% in the sixth year of its new licence term. The licensee added that it has also set itself the general objective of achieving a captioning level of 90% in the sixth year of its new licence term.

29. Consistent with this commitment and with the Commission's general approach for French-language services, the Commission is imposing a **condition of licence** requiring the licensee to close caption at least 65% of all programming aired during the broadcast day, beginning not later than 1 September 2008. The condition of licence is set out in the appendix to this decision. The Commission also notes that the licensee indicated that it intends to achieve a captioning level of 90% of its programming by the end of the new licence term. The Commission further advises the licensee that, at the time of its next licence term, the Commission intends to require this service to provide captioning for a minimum of 90% of all programming.
30. 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

31. 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
32. The Commission notes the steps the licensee has taken during the current licence term to provide improved access to viewers who have visual impairments. The licensee intends to make the independent producers, which provide programs for Canal Vie, more aware of the benefits for people who are visually impaired of having the program host provide, wherever possible and appropriate, audio description of certain information elements that appear on screen in textual or graphic form. The licensee also indicated that it is closely following technical developments that will improve access to Canadian programming services for people who have visual impairments, and that it intends to participate in the industry forums where these issues will be examined.
33. The Commission 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

34. 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.

Compliance with industry codes

35. 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 2004-22

Conditions of licence

1. (a) The licensee shall provide a national French-language specialty television service that is dedicated to information and entertainment programs focussed on three very specific subjects: lifestyle (human relations, social and interpersonal), health (physical and mental), and outdoor activities for families or individuals.
 - (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
 - 5 (b) Informal education/Recreation and leisure
 - 7 (a) Ongoing dramatic series
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
 - (c) In each broadcast week, the licensee shall devote no more than 5% of the broadcast day and no more than 5% of the evening broadcast period to programs from category 7(a).
 - (d) In each broadcast week, the licensee shall not broadcast more than two (2) feature films 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 60% 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 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 45% 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 51% 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) In addition to the twelve (12) minutes of advertising material referred to in subsection (a), the licensee may broadcast partisan political advertising during an election period.

- (d) The licensee shall not distribute any paid advertising material other than paid national advertising.
5. (a) The licensee shall charge each exhibitor of this service in Francophone markets a maximum wholesale rate of \$0.60 per subscriber per month, when the service is distributed as part of the basic service;
- (b) The licensee shall charge each exhibitor of this service in Anglophone markets a maximum wholesale rate of \$0.15 per subscriber per month, when the service is distributed as part of the basic service;
- (c) For the purpose of this condition, an exhibitor will be considered to be operating in a Francophone market where the population having French as its mother tongue represents more than 50% of the total population of all cities, towns and municipalities, encompassed in whole or in part within the licensed area of the exhibitor, according to the most recent population figures published by Statistics Canada.
6. The licensee shall provide closed captioning for not less than 65% of all programs aired during the broadcast day, beginning no later than 1 September 2008.
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 term "broadcast day" shall mean a 24 hour day commencing at 4:00 a.m. each day, or any other period approved by the Commission; and the terms "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 the term "paid national advertising" shall have the same meaning as that set out in the *Specialty Services Regulations, 1990*.