



Broadcasting Decision CRTC 2004-25

Ottawa, 21 January 2004

CHUM Limited
Across Canada

Application 2002-0954-5
Public Hearing in the National Capital Region
26 May 2003

Star!-TV (Star) – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Star!-TV (Star), 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 CHUM Limited (CHUM) for the renewal of the broadcasting licence for the national, English-language specialty television service known as Star!-TV (Star).
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 three letters specifically in support of Star's licence renewal application.
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 Star!-TV, 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.

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

6. As part of its licence renewal application, the licensee requested an amendment to its condition of licence in order to add categories 7(c) Specials, mini-series or made-for-TV feature films and 10 Game shows to the list of categories from which it may draw programming. The licensee also proposed an amendment to the condition of licence relating to its nature of service to allow the exhibition of category 7(d) Theatrical feature films aired on TV programming between 6 p.m. and 11 p.m. The proposed amendments are discussed below.

Expenditures on, and exhibition of, Canadian programming

7. In its application, CHUM proposed that Star maintain the Canadian content exhibition requirements set out in its original conditions of licence, which would see the service increase its overall Canadian content level from 40% to 50% and its evening level from 35% to 40% by the third year of the new term.
8. CHUM presented a number of arguments to support its proposal. First, it noted that Star is one of the few specialty services licensed in 1996 that did not launch in 1997 as part of a broad tier. Second, it pointed out that, since its launch, Star has not enjoyed widespread analog carriage and has instead relied on a hybrid of analog and digital distribution. In its view, this limited distribution has made it difficult for Star to attract subscribers, which has led to low advertising revenues. Third, unlike services that draw programming from other genres, Star does not have a library of Canadian programming from which to choose. Finally, CHUM argued that given that U.S.-based entertainment industry-related programs are important drivers of the service, increasing Canadian content levels on Star would result in a reduction in already low advertising revenues, this reduction leading to reduced spending on Canadian content.
9. With respect to Star's level of Canadian programming expenditures, CHUM submitted that an increase was not warranted at this time, given that Star only launched its service in 1999 and that its current 39% expenditure level is consistent with other similar services.
10. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been in the range of 20% to 24%. 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 in Star's Canadian programming expenditure (CPE) level is appropriate. Accordingly, the Commission is requiring the licensee, in each year of the licence term, to expend 42% 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.
11. In light of the increase of its spending on Canadian programming and consistent with the approach set out in Public Notice 2004-2, the Commission is also imposing, by **condition of licence**, the Canadian content exhibition levels as proposed by the licensee.

Nature of service

12. As noted above, CHUM requested a number of amendments to the current conditions of licence describing its nature of service, related to programs in category 7 Drama and comedy. CHUM requested an amendment to add program category 7(c) Specials, mini-series and made for TV feature films to the list of categories from which it may draw programming. It also applied to delete the condition of licence that prohibits Star from broadcasting category 7(d) Theatrical feature films aired on TV between 6 p.m. and 11 p.m. In its place, CHUM proposed to limit category 7 programming to 5% of the broadcast year and 5% of the evening broadcast period. The licensee also proposed an amendment to add category 10 Game shows to the list of categories from which it may draw programming.

Categories 7(c) and (d)

13. In support of its request, the licensee submitted that the addition of category 7(c) to the list of categories from which it may draw programming would enable Star to provide a more diverse and attractive service to the Canadian public. CHUM proposed that, should its request to add category 7(c) be approved, the existing condition of licence that stipulates that “programs drawn from category 7(d) shall be limited to ‘Movies or feature documentaries that are about the art and industry of show business featuring topics such as biographies of significant personalities, or stories set in the world of filmmaking, television and entertainment’” could apply to all of category 7 programming.
14. In addition, CHUM requested a deletion of the condition of licence that prohibits Star from broadcasting programming from category 7(d) between 6 p.m. and 11 p.m., a condition it called “unique” and “excessively restrictive.” As an alternative, CHUM proposed that Star be subject to a condition of licence stipulating that “no more than 5% of the broadcast year and no more than 5% of the evening broadcast period” shall be devoted to programming drawn from category 7, including category 7(c) if it were added to the list from which Star may draw programming.
15. The Commission is satisfied that the addition of category 7(c) would not represent a shift in Star’s nature of the service since Star is currently permitted to broadcast programming from category 7(d). The Commission further notes that the approval of CHUM’s request would allow Star a broader range of subcategories from which to draw programming, but that the total amount of category 7 programming would remain limited to 5% of the broadcast year, as set out in the current condition of licence. Accordingly, the Commission **approves** the request by CHUM for an amendment authorizing Star to draw programming from category 7(c). The Commission also considers that it is appropriate to limit all programs drawn from category 7 to programming that is about the art and industry of show business. **Conditions of licence** with respect to the above are set out in the appendix to this decision.
16. With respect to CHUM’s request to delete the current condition of licence that prohibits Star from broadcasting category 7(d) programming between 6 p.m. and 11 p.m., the Commission notes that this condition was originally put in place to keep Star from

competing with other services. However, the Commission recognizes that the broadcasting environment has changed and that there are now far more services permitted to broadcast drama programming without a restriction similar to Star's. Accordingly, the Commission considers that this concern may no longer be relevant.

17. In addition, the Commission notes that Star was originally permitted to broadcast category 7(d) programming during the day. Therefore, the Commission considers that permitting a limited amount of category 7(c) and (d) programming would not represent a significant shift to Star's nature of service definition.
18. In light of the above, the Commission considers it appropriate to delete the condition of licence that prohibits Star from broadcasting programming from category 7(d) between 6 p.m. and 11 p.m. and, instead, to impose a limit of 5% of the broadcast year and 5% of the evening broadcast period on categories 7(c) and (d) programming, taken as a whole. A **condition of licence** to this effect is set out in the appendix to this decision.

Category 10

19. With respect to adding category 10 to the list of categories from which Star may draw programming, the licensee stated that it would accept a condition of licence limiting the amount of such programming to 5% of the broadcast year. It also stated that it would only broadcast category 10 programming that focuses on the entertainment industry, which would enhance the service as an "Entertainment Information Station." Finally, the licensee indicated that Star has had to reject a number of proposals from independent producers of game shows based on the entertainment industry because the list of categories from which it may draw programming does not include category 10.
20. The Commission is satisfied that the addition of game shows would be in keeping with Star's nature of service. The Commission notes that no interventions were received expressing concern with this amendment. Accordingly, the Commission **approves** the request by CHUM for an amendment authorizing Star to broadcast game shows. A **condition of licence** is set out in the appendix to this decision.

Canadian independent production

21. As stated in Public Notice 2004-2, the Canadian Film and Television Production Association (CFTPA) recommended in its intervention that Star, along with a number of other services, be required to ensure that at least 75% of its original, first-run Canadian programming is the product of independent producers.
22. In response, CHUM noted that the "CFTPA's proposal far exceeds the requirements relating to the acquisition of programming from the independent production sector that have been imposed by the Commission on digital specialty services and conventional television broadcasters in recent years." CHUM reiterated that much of the programming on Star consists of news-magazine type programs presenting current affairs from the

Canadian and international entertainment industries. CHUM stated that if these types of programs did not focus on the entertainment industry, they would be classified as “current affairs” and, historically, broadcasters have not been required to acquire “current affairs” programming from independent producers.

23. Moreover, CHUM submitted that imposing a requirement that Star acquire a minimum level of programming from the independent production sector could prevent the service from meeting its conditions of licence relating to Canadian programming. CHUM noted that most of the funding available to independent producers is for the production of drama, documentaries and variety programming and not for programming about the entertainment industry. Furthermore, programming about the entertainment industry might not be of interest to many independent producers since it generally has a short shelf life. For these reasons, acquiring more programming from Canadian independent producers would be difficult, if not impossible. CHUM therefore indicated that a condition of licence that requires Star to acquire a minimum amount of programming from Canadian independent producers could “impact the service’s ability to meet its conditions of licence relating to Canadian programming” or “could result in the service having to change its programming focus” so that it could acquire the necessary amount of suitable programming from independent producers.
24. The Commission agrees with CHUM that much of the programming broadcast on Star is time-sensitive, and that if it had a different focus, the programming would be deemed “current affairs.” The Commission also acknowledges that much of Star’s programming is produced in-house. Any limit on acquiring programming from related producers would include programming produced in-house and, therefore, could prevent the service from meeting its conditions of licence relating to Canadian programming.
25. In light of the above, the Commission determines that it would be inappropriate to impose a requirement with respect to the amount of programming that Star must acquire from Canadian independent producers.

Regional reflection and production

26. In its application, CHUM stated that, in addition to having correspondents from across the country, Star sponsors, covers and reports from festivals and major events in most Canadian provinces. Star also sends representatives across the country to find new concepts for programming.
27. The Commission expects the licensee to ensure that the programming aired by Star 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

28. 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.
29. The Commission notes the initiatives that CHUM has taken in this regard. During the current licence term, CHUM 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. With specific reference to Star, the Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in the CHUM 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

30. 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.
31. 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.
32. The Commission further expects CHUM 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 Star.

Service to persons who are deaf or hard of hearing

33. 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.

34. In the present case, the licensee made a commitment to close caption, by August 2006, 90% of all programming broadcast on Star during each broadcast day. Star's current licence calls for close captioning in accordance with the policy set out in *Introductory statement – Licensing of new specialty and pay television undertakings*, Public Notice CRTC 1996-120, 4 September 1996 (Public Notice 1996-120), which requires licensees, by the end of their licence terms, to caption 90% of their programming.
35. In support of its commitment, the licensee explained that it was of the view that meeting the 90% requirement by the seventh year of Star's operation was consistent with Public Notice 1996-120. As previously noted, CHUM stated that, unlike the other services licensed in 1996, Star has not enjoyed widespread analog carriage and has instead relied on a hybrid of analog and digital distribution. This limited distribution has made it difficult for Star to attract advertisers. CHUM also pointed out that programming acquired by other services is often already captioned, but that much of the programming broadcast on Star is not, forcing Star to underwrite this cost. Furthermore, CHUM indicated that the financial impact of close captioning 90% of programming in each year of the new licence term would cost approximately \$1.5 million over the next three years and would significantly reduce the service's pre-tax profit in the first years of the new licence term.
36. The Commission has generally extended some flexibility to those services with annual revenues under \$10 million. It notes, however, that Star has had annual revenues in excess of \$10 million since 2001-2002. Furthermore, in the Commission's view, the cost of offering closed captioning is part of the expense of holding a broadcasting licence.
37. In light of the above and consistent with the Commission's general approach for English-language services, the Commission considers that it is appropriate to impose a **condition of licence** requiring the licensee to close caption at least 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.
38. 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.
39. The Commission expects that, during the new licence term, the licensee will continue to 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

40. 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
41. In its application, the licensee stated that it established guidelines for its services governing the use of voice-overs to accompany on-screen text information, which it will continue implementing throughout the new licence term. With respect to the provision of described programming, CHUM indicated that the current equipment being used for Star is only capable of two channels of audio. It added, however, that new machines will be installed to allow for the requisite additional channels and that, once a significant number of broadcasting distribution undertakings (BDUs) are able to make available any described video programming, Star will be technically ready to launch described video “within 90 days.”
42. In response to interventions that recommended that Star be required to provide levels of described video programming equivalent to those required of conventional television stations, CHUM argued that, like news and music videos, Star’s programming, which is talk-based and in the category of “magazine,” would not benefit from video description.
43. 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.

Programming delivered across time zones

44. 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

45. 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 2004-25

Conditions of licence

1. (a) The licensee shall provide a national, English-language specialty television service whose main purpose is to inform its audience on all aspects of the entertainment industry.
 - (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:
 - 1 News
 - 2 (a) Analysis and interpretation
(b) Long-form documentary
 - 3 Reporting and actualities
 - 7 (c) Specials, mini-series or made-for-TV feature films
(d) Theatrical feature films aired on TV
 - 8 (a) Music and dance other than music video programs or clips
(b) Music video clips
(c) Music video programs
 - 9 Variety
 - 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 year, the programming drawn from categories 7(c) and (d), taken as a whole, shall make up no more than 5% of the broadcast day and no more than 5% of the evening broadcast period.
 - (d) Programs drawn from categories 7(c) and (d) shall be limited to programming that is about the art and industry of show business featuring topics such as the biographies of significant personalities, or stories set in the world of filmmaking, television and entertainment.
2. (a) In each of the first and second broadcast years of the new licence term, the licensee shall devote to the exhibition of Canadian programs not less than 40% of the broadcast day, and not less than 35% of the evening broadcast period.
 - (b) In the third broadcast year and in each subsequent broadcast year of the new licence term, 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 39% 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 42% 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 national paid advertising.
5. The licensee shall charge each exhibitor of this service a maximum wholesale rate of \$0.05 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 not later than 1 September 2004.
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 year," "evening broadcast period" and "clock hour" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*; "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.