



Broadcasting Decision CRTC 2004-9

Ottawa, 21 January 2004

1163031 Ontario Inc.
Across Canada

Application 2002-0897-7
Public Hearing in the National Capital Region
26 May 2003

Outdoor Life Network – Licence renewal

In this decision, the Commission renews the broadcasting licence for the specialty television service known as Outdoor Life 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 1163031 Ontario Inc. for the renewal of the broadcasting licence for the national, English-language specialty television service known as Outdoor Life Network (OLN).
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 100 interventions specifically in support of OLN's licence renewal application, including a petition with 72 signatures. Five interventions opposing specific amendments to OLN's licence were also received. The concerns raised by these interveners are discussed in 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 Outdoor Life 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. As part of its licence renewal application, the licensee proposed to increase its Canadian content levels during the broadcast day and the evening broadcast period. The licensee also requested an amendment to its condition of licence in order to add categories 6(a) Professional sports and 7(a) Ongoing drama series, 7(b) Ongoing comedy series (sitcoms), 7(c) Specials, mini-series or made-for-TV feature films, 7(d) Theatrical feature films aired on TV and 7(g) Other drama to the list of categories from which it may draw programming. The proposed amendments are discussed below.

Ownership

7. 1163031 Ontario Inc., the licensee of OLN, is owned by 1163030 Ontario Inc. (the parent corporation), which in turn is owned in equal parts (33.33% each) by CTV Inc. (CTV), Rogers Broadcasting Limited (Rogers) and Outdoor Life Network L.L.C., a non-Canadian entity.
8. The Commission has generally required that an independent programming committee be put in place with full programming responsibility in cases where the non-Canadian voting interests of a parent corporation are higher than 20%.
9. In this case, the licensee submitted that it should not be required to establish an independent programming committee to oversee OLN's programming decisions given that its shareholder agreement gives the management group, which is composed of CTV personnel, complete discretion over OLN's programming schedule and that its service agreement with CTV appoints CTV as the manager of OLN.
10. The licensee further stated that the terms of its existing service agreement are currently being renegotiated and that it would consider adding a provision in the new agreement that would preclude its board of directors from issuing any directions related to programming. Furthermore, the licensee agreed at the hearing that its board of directors would exclude representatives of the non-Canadian shareholder.
11. The Commission is satisfied that, given the existing and proposed mechanisms, neither the parent corporation nor the non-Canadian shareholder will control or influence any of the licensee's programming decisions and that, therefore, the ownership requirements specified in *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, are met.

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

12. In light of the above, the Commission has decided not to require that the licensee establish an independent programming committee to oversee OLN's programming decisions. Nevertheless, the Commission requires that:
- the licensee submit a duly signed and executed copy of its new service agreement by 22 March 2004; reflecting the provision noted in paragraph 10 above;
 - the licensee obtain the Commission's prior approval before making any substantial changes to the shareholder agreement or to the service agreement; and
 - no member of the licensee's board of directors be a person who is a director, an officer, or a current or former employee of any non-Canadian shareholder of the licensed undertaking.

Expenditures on, and exhibition of, Canadian programming

Expenditures

13. OLN's current condition of licence requires it to expend 37% of the previous year's gross revenues on Canadian programming expenditures (CPE). The licensee proposed that OLN's CPE requirement should remain the same over the new licence term. In support of this proposal, the licensee submitted that the service's current CPE requirement is consistent with that of other specialty services licensed at the same time as OLN in 1996. It further stated that, although OLN has one of the lowest wholesale rates among analog specialty services, it has maintained its commitment to CPE over the course of its first licence term.
14. While the Commission acknowledges that OLN has met its commitment to CPE over the first licence term, it also notes that OLN's current CPE requirement is below the average obligation of the other specialty services licensed in 1996. In addition, OLN has seen a positive financial performance over its licence term. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been in the range of 25% to 29%. Taking this into account and consistent with the approach described in Public Notice 2004-2, the Commission has determined that an increase of four percentage points is appropriate. Accordingly, the Commission is requiring the licensee, in each year of the licence term, to expend a minimum of 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

15. As noted above, the licensee proposed to increase its commitment to Canadian programming by raising the Canadian content levels required by condition of licence from 30% to 50% during the broadcast day and from 30% to 35% during the evening broadcast period.

16. The licensee provided a number of arguments to support evening Canadian content levels for OLN that are lower than the average evening requirement for the other specialty services licensed in 1996. According to the licensee, obtaining Canadian programming for OLN's niche service is more difficult than obtaining Canadian programming for other services. A higher Canadian content requirement could therefore lead to an increase in OLN's repeat factor. The licensee also submitted that, given OLN's low wholesale rate, it should not be expected to provide the same level of Canadian content as other services with higher rates. Furthermore, the licensee expressed concern that an increase in its Canadian content would decrease its audience, thereby decreasing its advertising revenue, a significant part of its revenue, given its low wholesale rate.
17. In its intervention, the Canadian Film and Television Production Association (CFTPA) supported OLN's proposed increases in Canadian content.
18. Having considered the licensee's arguments with respect to its proposed Canadian content levels, the Commission is of the view that the licensee's concerns are not unique to OLN. Furthermore, the Commission notes that the programming for a service of OLN's genre is relatively inexpensive compared to drama or live sports, and that OLN has seen a positive financial performance over the past licence term. In light of the above, the Commission determines that it is appropriate to bring OLN's exhibition levels more in line with the levels of other analog specialty services. Accordingly, it has increased OLN's Canadian content requirement to 50% during the broadcast day and 40% during the evening broadcast period. A **condition of licence** is set out in the appendix to this decision.

Nature of service

19. OLN's current nature of service requirement stipulates that the service's "programs will deal exclusively with outdoor recreation, conservation, wilderness and adventure." The original licensing decision also describes OLN's programming as consisting of eight key themes: 1) outdoor exploration and adventure; 2) marine recreation; 3) winter recreation; 4) conservation; 5) nature enthusiasts; 6) anglers; 7) outdoor cooking and 8) hunting."
20. OLN is currently permitted to draw programming from the following categories:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 5 (b) Informal education/Recreation and leisure
 - 6 (b) Amateur sports
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
 - 15 Filler programming

Category 6(a) Professional sports

The application

21. The licensee proposed to add category 6(a) Professional sports to the list of categories from which OLN may draw programming to ensure that the service has the necessary regulatory authority to continue broadcasting what it referred to as non-mainstream professional sports. The licensee noted that certain programs that had previously been logged as category 6(b) Amateur sports are now being classified by the Commission as category 6(a). Accordingly, to ensure it could continue to broadcast such programs, it needed to add category 6(a) to the list of categories from which it may draw programming. The licensee added that programming from category 6(a) would make up no more than 15% of OLN's broadcast year. According to the licensee, the addition of this category would help broaden the service's appeal to a wider audience, which would increase the service's advertising revenue.

Interventions

22. Global Television Network (Global) opposed the licensee's request to add category 6(a) to the list of categories from which OLN may draw programming. Global argued that OLN's entry into the professional sports market would raise rights prices and negatively affect the relatively new Category 2 digital services Xtreme Sports and Fox Sports World, which already carry the type of programming OLN proposed to carry.
23. The Canadian Broadcasting Corporation (CBC) expressed concern that, if the proposed amendment were approved, the service could become a second window for TSN programming.
24. While The Score Television Network Ltd. (The Score) recommended that the licensee's request to add category 6(a) to OLN's nature of service definition should be denied, it also suggested that, in the event of approval, a comprehensive series of limitations should be applied. Like the CBC, The Score expressed concern that OLN could become a second window for TSN and CTV programming. In order to prevent this, The Score recommended that OLN and CTV-related companies, as well as OLN and Rogers, not be permitted to share or source any professional sports programming.
25. The Score stated that, although the licensee indicated that the addition of category 6(a) would increase the service's advertising revenue, it did not demonstrate that OLN has a financial need for this addition. More importantly, in The Score's view, the licensee did not propose a corresponding contribution to the Canadian broadcasting system. For these reasons, The Score recommended that, should OLN be permitted to broadcast programming from category 6(a), it should be required to expend 45% of its revenues on Canadian production.

26. Furthermore, as part of its recommendations, The Score suggested that OLN should not be permitted to broadcast live professional event programming or any professional sports programming of the following types: ice hockey, baseball, football, basketball, golf, soccer, rugby, horse racing, automobile racing, tennis, cricket, boxing, curling, wrestling and figure skating. It also recommended a requirement that 50% of all professional sports events broadcast on OLN be Canadian.
27. The Score further suggested that, should OLN be permitted to broadcast programming from category 6(a), such programming should be limited to no more than 5% of OLN's schedule. The Score also recommended that OLN's compliance be measured quarterly.
28. The Score emphasized that its suggested limitations were "a second best alternative to outright denial of the Application for Category 6(a) programming which is The Score's recommendation."

The applicant's reply

29. In response to the limitations suggested by The Score, the licensee submitted that the safeguards it suggested in its application were adequate. In the licensee's view, given OLN's narrow nature of service definition and the limited availability of outdoor- and adventure-themed sports programming, The Score's proposal would make OLN's ability to broadcast professional sports programming in a way that makes economic sense almost meaningless.
30. In response to the concerns expressed by the CBC and The Score with respect to OLN becoming a second window for TSN and CTV programming, the licensee contended that a 10% limit on programming shared between OLN and CTV or Rogers would be more realistic than the total prohibition proposed by The Score.
31. The licensee also stated that The Score provided no rationale as to why live coverage of professional events should be precluded from OLN. In addition, according to the licensee, the list of prohibited sports put forward by The Score is unnecessary given that OLN has already committed not to broadcast any of the major North American "stick and ball" sports, and that all sports programming broadcast on OLN must be consistent with the service's outdoor- or adventure-themed nature of service.
32. With respect to The Score's recommendation that 50% of all professional sports events broadcast on OLN should be Canadian, the licensee submitted that this level was overly restrictive, especially in light of OLN's proposal to increase its overall Canadian content to 50%.

33. Furthermore, the licensee stated that the 5% limit proposed by The Score with respect to the amount of programming the service can draw from category 6(a) would unduly restrict OLN's ability to continue carrying the types of sporting events that it currently carries, "to the extent that such events are characterized as professional sports."
34. The licensee was amenable to The Score's suggestion that OLN's compliance with regard to category 6(a) programming be measured on a quarterly basis.

The Commission's analysis and determination

35. As to limitations, the Commission is of the view that The Score's recommendations are too restrictive overall. However, the Commission recognizes The Score's broad concerns and has incorporated elements of its suggestions in its determinations.
36. While the Commission acknowledges The Score's concern that OLN could become a second sports programming window for its other Canadian shareholders, it notes that OLN's programming must deal exclusively with outdoor recreation, conservation, wilderness and adventure and, therefore, even with the addition of category 6(a), the service would not be permitted to broadcast many of the types of sports that The Score suggested should not be permitted on the service. With respect to the concerns expressed by Global, the Commission considers that the required nature of OLN's programming would also limit the service's impact on the professional sports rights market.
37. In light of the above, the Commission **approves** the licensee's request and adds program category 6(a) to the list of categories from which OLN may draw its programming, reminding the licensee that all such programming must be consistent with its outdoor recreation theme. While the Commission is of the view that the amount of such programming should be limited, it considers the 5% limit proposed by The Score is overly restrictive and considers that a 15% limit is more appropriate. Nevertheless, the Commission has determined that the type of professional sports programming permitted on OLN should be defined. Accordingly, the service will not be permitted to broadcast professional sports programming that includes stick and/or ball sports, including hockey, baseball, football, basketball, golf, soccer and tennis. A **condition of licence** on the nature of service is set out in the appendix to this decision, and incorporates the limitations on the use of material from category 6(a).

Categories 7(a), (b), (c), (d) and (g)

The application

38. In its application, the licensee proposed to add categories 7(a) Ongoing drama series, 7(b) Ongoing comedy series (sitcoms), 7(c) Specials, mini-series or made-for-TV feature films, 7(d) Theatrical feature films aired on TV and 7(g) Other drama, to the list of categories from which OLN may draw programming. It proposed that programming from these categories would make up no more than 15% of OLN's broadcast year and would be directly related to outdoor recreation, conservation, wilderness or adventure. According to the licensee, the addition of these categories would help broaden the

service's appeal to a wider audience, which would increase the service's advertising revenue. It would also place OLN on a more level playing field with other specialty services that are permitted to broadcast category 7 programming provided it is directly related to the service's core mandate.

39. At the hearing, the licensee withdrew its request to add category 7(b) to the list of categories from which OLN's programming may be drawn.

Interventions

40. Astral Broadcasting Group Inc. (Astral) expressed concern that the 15% limit on category 7 programming proposed by the licensee was too high and would result in a dilution of OLN's nature of service.
41. Similarly, the CFTPA submitted that to preserve the emphasis on lifestyle programming devoted to outdoor recreation, conservation, wilderness and adventure, OLN's category 7 programming should be limited to 5% of its schedule.

The applicant's reply

42. In response to the interventions, the licensee stated that a maximum of 5% programming from category 7 would be sufficient and requested that category 7(d) not be subject to this limitation.

The Commission's analysis and determination

43. The Commission notes that it has allowed drama programming on many lifestyle services in the past. It therefore considers that there is a place for category 7 programming on a lifestyle channel such as OLN.
44. The Commission is satisfied that the addition of category 7 programming would not allow for a shift in OLN's nature of service, given that all its programming must adhere to OLN's nature of service condition of licence. As discussed in Public Notice 2004-2, the Commission has also determined that, in support of Canadian drama programming, any programming broadcast from the new category must be Canadian drama. In light of the above, the Commission **approves** the licensee's request and adds program categories 7(a), (c), (d) and (g) to the list of categories from which OLN may draw its programming, provided that such programming is consistent with the nature of service and that it is exclusively Canadian programming.
45. Nevertheless, the Commission is of the view that the amount of such programming should be limited and will therefore impose a condition of licence that no more than 5% of the programs broadcast on OLN shall be drawn from category 7, including category 7(d), as well as a condition that the service shall not broadcast more than one feature film per week. A **condition of licence** on the nature of service is set out in the appendix to this decision, and incorporates the limitations on the use of material from category 7.

Category 15 Filler programming

46. The Commission notes that OLN's statement that it will not draw programming from category 15 Filler programming is consistent with the Commission's policy with regard to filler programming as set out in *Introductory statement – Licensing of new specialty and pay television services*, Public Notice CRTC 1994-59, 6 June 1994. Accordingly, the Commission will remove category 15 from the list of categories from which OLN may draw programming. The amended **condition of licence** is set out in the appendix to this decision.

Canadian independent production

47. In its application, the licensee proposed to maintain its existing condition of licence that stipulates that it shall not remit any program development funds to its shareholders or affiliated corporations. The licensee also proposed to maintain its existing commitment that 60% of OLN's new independent Canadian productions would come from arm's length sources.
48. In its intervention, Alliance Atlantis Broadcasting Inc. (Alliance) recommended that OLN should be required to ensure that at least 75% of its original Canadian programs are the product of independent producers. As noted in Public Notice 2004-2, CFTPA made the same recommendation.
49. In response, the licensee indicated that it would be willing to accept a condition of licence that no less than 75% of OLN's new independent productions would come from non-affiliated producers.
50. Consistent with the approach outlined in Public Notice 2004-2, the Commission considers that it is reasonable to expect the licensee, for the duration of the new licence term, to ensure that a minimum of 75% of all original, first-run, Canadian programming broadcast on OLN is acquired from non-related producers.

Regional reflection and production

51. The licensee indicated that OLN reflects Canada's regional diversity to viewers by including, within its program schedule, programming that reflects Canada's various and unique regions. OLN also commissions programming from independent producers outside Toronto, Montréal and Vancouver.
52. The Commission expects the licensee to ensure that the programming aired by OLN reflects all 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

53. 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.
54. The Commission notes that OLN is subject to the CTV Inc. cultural diversity plan, which sets out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to the presence and portrayal of cultural diversity. The Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in its corporate cultural diversity plan.
55. 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

56. 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.
57. 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.
58. The Commission further expects the licensee 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 OLN.

Service to persons who are deaf or hard of hearing

59. 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.

60. In the present case, the licensee made a commitment to close caption 90% of all programming broadcast on OLN during each broadcast day of the new licence term.
61. 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 not less than 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.
62. 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.
63. 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

64. 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
65. In the present case, the licensee stated that OLN is not technically able to provide described video. It indicated, however, that most of OLN's programming is intrinsically descriptive in nature. The licensee submitted that OLN tries to acquire described versions of programs wherever possible and to ensure that, for any of the original productions that it commissions, the producer is sensitive to the needs of persons whose vision is impaired.
66. Consistent with these commitments and with Public Notice 2004-2, the Commission expects that, during the new licence term, the licensee will:

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.

- 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

67. 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

68. 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 2004-9

Conditions of licence

1. (a) The licensee shall provide a national English-language specialty television service devoted exclusively to programs that deal with outdoor recreation, conservation, wilderness and adventure.
 - (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
 - 5 (b) Informal education/Recreation and leisure
 - 6 (a) Professional sports
 - (b) Amateur sports
 - 7 (a) Ongoing dramatic series
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (g) Other drama
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
 - (c) In each broadcast year, the licensee shall devote to programs drawn from category 6(a) not more than 15% of the broadcast day and such programming shall not include stick and/or ball sports, including hockey, baseball, football, basketball, golf, soccer, and tennis.
 - (d) The licensee shall devote to programs drawn from categories 7(a), (c), (d) and (g) not more than 5% of the broadcast year, including no more than one feature film per broadcast week, and all such programs shall be Canadian.
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 37% 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 wholesale rate of \$0.10 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 not remit any program development funds to its shareholders or affiliated corporations.
 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 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.