



Broadcasting Public Notice CRTC 2004-2

Ottawa, 21 January 2004

Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services

In decisions issued today, the Commission renews the licences of 22 specialty services from 1 March 2004 to 31 August 2010. All of the renewal applications were by the licensees of services authorized by the Commission in September of 1996. They were considered at the 26 May 2003 Public Hearing in the National Capital Region. The May Public Hearing was the Commission's opportunity to review the licensees' performance during their initial term, examine their financial circumstances, and assess their contributions to the Canadian broadcasting system. At the hearing, the Commission also explored amendments proposed by certain of the applicants concerning, among other things, their nature of service conditions of licence and their per-subscriber wholesale rates for carriage by broadcasting distribution undertakings as part of the basic service.

This notice discusses the various issues under examination at the hearing, and outlines the general approach the Commission has decided to follow with respect to each issue. Details regarding each applicant's specific proposals for the new licence term, and the conditions of licence and other obligations imposed by the Commission on each service, are set out in the individual renewal decisions that accompany this notice.

Overview

1. The 22 specialty services whose licence renewals are the subject of today's decisions were originally licensed in September 1996 and commenced operations over the course of the following four years. They are referred to throughout this notice as the 1996 services. Their licensees, and the numbers of their individual renewal decisions, are listed in the appendix to this notice.
2. At the time the 22 specialty services were approved in 1996, there were 21 other analog specialty services then already operating in Canada. Today, the landscape has changed considerably. Almost 120 Canadian specialty services - both analog and digital - are in operation, offering programming in a variety of genres. These services are complemented by a list of more than 90 non-Canadian, satellite-delivered television services that are eligible for distribution by broadcasting distribution undertakings (BDUs) in accordance with the Commission's distribution and linkage requirements¹.

¹ See *Linkage requirements for direct-to-home (DTH) satellite distribution undertakings*, Public Notice CRTC 2001-89, 3 August 2001 and *Distribution and linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2003-42, 29 July 2003.

3. In the 1995/96 broadcast year, the total revenues earned by the 21 Canadian analog specialty services that were then in operation were approximately \$542 million. Last year, some 48 Canadian analog specialty services were in operation and earned revenues amounting to just over \$1.3 billion. Of this amount, over \$439 million was earned by the 1996 services. In the 2002 broadcast year, the average profit margin before deductions for interest and tax earned by the analog specialty service industry (the PBIT margin, or profitability expressed as a percentage of revenues), was 19.4%. Eleven of the 1996 services earned PBIT margins that exceeded 20%.
4. Some of the 1996 services now up for licence renewal are experiencing financial losses. As indicated by the above, however, the group as a whole is on a reasonably sound financial footing. Accordingly, in Broadcasting Notice of Public Hearing CRTC 2003-3, 21 March 2003 (the Notice of Hearing), the Commission advised each applicant that, at the licence renewal hearing to be held starting on 26 May 2003 (the May hearing), the Commission intended to examine “the appropriateness of increasing the licensee’s contributions to Canadian programming, in terms of the exhibition of Canadian content and/or expenditure commitments, where existing commitments to Canadian programming and/or to Canadian programming expenditures are low in relation to other specialty services, or where the financial situation or nature of service warrants it.”
5. The Commission also indicated in the Notice of Hearing that it wished to consider various other issues at the hearing, including the following:
 - the proposals by certain specialty licensees to increase the wholesale rates they are authorized to charge BDUs, and the criteria employed by the Commission in setting such rates;
 - other proposals by licensees to amend their nature of service conditions of licence (particularly where the changes would represent a significant shift), for the purpose of ensuring that such amendments are consistent with the Commission’s one-per-genre policy and its objective of programming diversity;
 - the mechanisms and policies that licensees have in place to ensure that programming distributed over various time zones and intended for adult audiences is sensitive to viewers’ concerns about violence in television programming and is scheduled during the watershed hours of 9:00 p.m. to 6:00 a.m. in all time zones;
 - the service provided to subscribers who are blind or have a visual impairment, and to those who are deaf or hard of hearing;
 - the ways in which each licensee contributes to a broadcasting system that accurately reflects the presence in Canada of ethno-cultural minorities and Aboriginal peoples; and

- each licensee's commitments to independent production, as well as its contributions to regional production and reflection.
6. The following sections of this notice outline the various issues that were examined at the public hearing, as they touch upon the specialty services as a group, as well as the general approach the Commission has decided to follow with respect to each issue. Certain of these matters are revisited in the individual renewal decisions that accompany this notice. The individual decisions set out the details regarding an applicant's specific proposals for the new licence term, and the conditions of licence and other obligations determined by the Commission for each service.

Expenditures on, and exhibition of, Canadian programming

7. The Canadian programming requirements imposed on specialty services at the time of licensing or at licence renewal are determined by the Commission on a case-by-case basis. The Commission's requirements are based on such considerations as the genre of the service proposed by the applicant, the availability of Canadian programming falling within that genre, and the applicant's other plans and commitments. The Commission also takes into account the applicant's proposed wholesale fee and the type of carriage on BDUs that the service would receive. As noted above, in the Notice of Hearing the Commission indicated that it intended to examine the appropriateness of increasing the licensees' expenditure and/or exhibition requirements for Canadian programming.
8. At the May hearing, certain interveners noted that the financial performance of many of the 1996 services had well exceeded their original projections. These interveners were thus in favour of expanding the obligations imposed on specialty services with respect to Canadian program spending and exhibition. The Directors Guild of Canada (DGC), for example, highlighted what it described as "the growing importance of the commitments of specialty services to the achievement of the goals of the *Broadcasting Act*." According to the DGC, it follows that "those entities that are able to contribute more to the Canadian broadcasting system in their renewal terms should be required by the Commission to do so...". This view was also shared by the Writers Guild of Canada (WGC), the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), and by the Communication, Energy and Paper Workers Union of Canada (CEP).
9. A group of four independent producers who appeared at the hearing argued that the system would benefit to a greater degree if more money were spent on fewer programs. They suggested that this would permit the production of better quality programming.
10. The most frequently expressed view among the licensees of the 1996 services themselves was that the Commission should not penalize their entrepreneurial success by imposing requirements for Canadian program expenditures and exhibition that are any more onerous than those that currently apply. Many of these services, supported by their industry association, the Canadian Association of Broadcasters (CAB), argued that any across the board increases would be inappropriate due to the challenges the industry now faces as a result of increased competition, audience fragmentation, and uncertainties

associated with the transition to digital distribution. Licensees also suggested that the specialty industry has matured, and that subscriber revenues and advertising revenues earned by specialty services have reached a plateau.

11. The Commission notes that there has been a pattern over the past decade of growth in the advertising revenues of specialty services, growth that has been sustained even in years when the launch of new specialty services brought increased competition for these revenues. The Commission also notes that the existing requirements for Canadian program expenditures and exhibition were imposed at the time of initial licensing, when the services had no track record upon which to base projections.
12. As indicated earlier, the average PBIT margin earned by the specialty industry last year stood at a very healthy level. Traditionally, the Commission has considered it appropriate that a broadcaster's profitability be taken into account when assessing the contribution it should be called upon to make to the Canadian broadcasting system. At the same time, the Commission agrees with those who suggested that it would be unfair and, over the long term, potentially counter-productive, for the Commission to increase the requirements imposed on profitable specialty licensees to a degree that would unduly penalize their entrepreneurial success and undercut their motivation to continue pursuing increased profit margins.
13. Based on its consideration of the record of this proceeding, the Commission has therefore decided to adopt a graduated approach in setting Canadian programming expenditure requirements that the licensees of the 1996 services will be required to meet during the upcoming licence term, based upon the historical average PBIT margin for each service over the initial licence term. Using this approach, incremental increases in Canadian programming expenditure requirements for undertakings have been determined as follows.
14. Licensees whose historical PBIT levels have been in the 20 to 24% range will be required to increase their minimum annual expenditures on Canadian programming by an increment of three percentage points over the amounts specified in their existing conditions of licence. Increments of four and six percentage points will be required of licensees whose historical PBIT levels have been between 25 and 29%, and 35 and 39%, respectively. Licensees with historic PBIT levels above 40% will be required to increase their minimum annual expenditures on Canadian programming over the amounts specified in their existing conditions of licence by an increment of seven percentage points. Licensees having a historical PBIT of less than 20% will be required to make minimum expenditures on Canadian programming at the same levels required by their existing conditions of licence.

15. The Commission is satisfied that this approach is balanced and fair to all parties, taking into account the past financial performance of each service, and its projections going forward. The Commission notes that, under its approach, those specialty services whose Canadian programming expenditure requirements have been increased are still projected to achieve reasonable profit margins throughout the next licence term, while those that have recorded PBIT margins of under 20% during their first licence term have not been required to increase their spending on Canadian programming at this time.
16. The Commission is of the view that it would be more beneficial at this time to focus on increasing the amount that the 1996 services spend on Canadian programming than on increasing the overall amount of such programming that they exhibit. In this regard, the Commission has taken into account the views of those interveners who suggested that such an approach would allow licensees greater flexibility to attract audiences and advertising revenues through the scheduling of relatively less expensive, but popular non-Canadian programming, while encouraging them to focus their resources on the production of Canadian programming of higher quality. In adopting this approach, the Commission has also been mindful of the demand currently being placed on production funds such as the Canadian Television Fund (CTF).
17. For those specialty service licensees whose condition of licence requirements with respect to Canadian programming are altered by today's decisions, the new requirements will come into effect on 1 September 2004, the beginning of a new broadcast year. The Commission considers that this lead time will provide licensees with sufficient opportunity to adjust their programming strategies in response.

Eligibility of Canadian Television Fund top-ups as Canadian programming expenditures

18. There was discussion at the hearing concerning whether broadcasters should continue to be permitted to claim, as part of their Canadian program expenditures, the amounts they submit to the CTF as licence fee top-ups to trigger new productions. The DGC, WGC and ACTRA, supported by CEP, argued in their submissions that such top-ups should no longer count as a credit towards a licensee's Canadian programming expenditure requirements. The Canadian Film and Television Production Association (CFTPA) agreed with this view in principle, but argued that a licence renewal hearing did not provide the best venue to examine all possible implications of the issue or reach fully informed conclusions on the matter. The CFTPA was generally supported in this view by broadcasters. Since not all interested parties had the opportunity to comment during this proceeding, the Commission has decided to make no determination on the issue at this time.

Wholesale rates

19. Licensees of three of the 1996 services proposed increases in their wholesale rates. Discussion at the May hearing focused on the purposes served by the regulation of wholesale rates and the criteria that the Commission should apply in setting them. In their interventions, BDU licensees generally opposed the rate increases proposed by the three licensees, and recommended that decreases be ordered in the case of more profitable services. They argued that decreases would oblige the specialty services to rely more on advertising revenues and strive to achieve greater operational efficiencies. Cogeco Cable Inc. (Cogeco) and Quebecor Media Inc. suggested that the wholesale rates of specialty services should no longer be regulated.
20. The licensees of specialty services generally argued that wholesale rates for specialty services should remain regulated, since these rates serve as a basis for negotiating discretionary rates with BDUs. They were also of the view that the regulation of wholesale rates by the Commission through a public process was preferable to a system in which rates would be totally determined by market forces or by a dispute resolution process.
21. Interveners and applicants proposed criteria for setting rates that included both objective and subjective elements, such as the contributions made by a service to the broadcasting system, its financial circumstances and its popularity among viewers. Some proposed that there be a rate of return benchmark for the specialty industry, or that the cost of programming in a genre, particularly of Canadian programming, be considered. Other suggestions were that rate setting should encompass consideration of the entire broadcasting environment, including the current economic situation, technological changes, competitive factors and synergies between services.
22. The Commission has considered the views of the parties. As a general principle, the Commission considers that specialty services should examine all possible alternative means to expand their revenues, especially their advertising revenues, before applying to increase their wholesale rates. In assessing the current applications by three specialty licensees for rate increases, the Commission has decided to follow the same approach as that followed in other recent cases involving, for example, Newsworld and Vision TV. Specifically, the Commission has been guided by the following principles:
 - any increase granted by the Commission in the wholesale rate charged by a specialty service must be devoted to incremental programming-related expenditures;
 - the new or enhanced programming that results must be consistent with the undertaking's nature of service conditions of licence; and
 - no portion of the increase may go directly to enhancing a licensee's profitability.

23. The Commission's application of these principles in the decisions accompanying this notice has resulted in the partial approval of increases in the wholesale rates charged by two of the specialty services concerned (The Score and CTV Newsnet) and the denial of any increase in the case of the third service (SportsNet). In each of its two decisions granting partial approvals, the Commission has required that annual reports be filed demonstrating that the licensee has met the Commission's expectations that incremental revenues earned from the rate increase be directed either to maintaining programming enhancements introduced following the original licensing decision or to new programming improvements proposed in the licence renewal application.

Proposed amendments to nature of service conditions of licence

24. As indicated earlier, several licensees of the 1996 services included requests in their renewal applications for amendments to their nature of service conditions of licence. Eight licensees proposed amendments that would either broaden the range of subcategories of category 7 Drama programming identified in their current nature of service conditions of licence or permit them to include category 7 programming in their schedules for the first time. Other licensees requested amendments that would add programming from other categories, such as category 10 Game shows, or would alter other programming elements included in their nature of service conditions of licence.
25. Several interveners, including Stornoway Communications Limited Partnership, Alliance Atlantis Communications Inc. (Alliance Atlantis), Pelmorex Communications Inc., Cogeco, TQS inc., CHUM Limited and CTV Television Inc., expressed concern about any change that would alter the nature of a particular service or would move the service in a direction that would increase competition with other specialty services, thereby lessening diversity and calling into question the Commission's one-per-genre policy for specialty services. Global Television Network Inc. suggested that the proposals by certain licensees to add non-Canadian drama would increase the competition, and hence the price, for the rights to such programming.
26. Several other interveners were supportive of those applications that sought authority to introduce a Canadian drama component to a service, or to expand the amount or the number of subcategories of Canadian drama beyond those currently authorized. Alliance Atlantis supported the broadcast of Canadian drama provided it was "suitably themed". The CFTPA was also generally supportive of the proposed amendments by specialty licensees to add or increase the broadcast of Canadian drama, provided that the goals of genre protection were taken into account. The DGC, WGC, ACTRA and CEP suggested that the hearing could serve as a useful forum to explore a number of broad issues surrounding Canadian drama, including an examination of the role that specialty services should play in providing such programming. In this context, they proposed that all specialty services be permitted to air original Canadian drama.

27. In light of the Commission's one-per-genre policy and its objective of maintaining programming diversity, in examining the proposals seeking authority to add or increase drama programming or for other modifications to a licensee's permitted programming, the Commission has sought to determine whether each particular modification would be consistent with the nature of the licensee's service. The Commission has also examined each licensee's nature of service condition of licence to determine whether certain other amendments might be warranted in the interest of greater consistency, precision and clarity, and to reduce the potential for misunderstanding or misinterpretation. In those cases where a licensee has proposed to introduce a drama component to its programming service for the first time, the Commission has required that the additional component be in keeping with the licensee's nature of service, and that it be exclusively in support of Canadian drama programming. The Commission's determinations with respect to the proposed amendments to each licensee's nature of service conditions of licence are set out in the individual decisions concerned.
28. As regards the views of the DGC, WGC, ACTRA, CEP and others that the hearing be used as a forum to explore questions and concerns surrounding the overall presence of drama on Canadian television, the Commission notes that, in *Support for Canadian television drama – Call for comments*, Broadcasting Public Notice CRTC 2003-54, 26 September 2003, it has initiated a separate public process to consider those issues.

Independent production

29. Section 3(1)(i)(v) of the *Broadcasting Act* (the Act) states that the programming provided by the Canadian broadcasting system should "include a significant contribution from the Canadian independent production sector." Accordingly, in their applications, the specialty service licensees were asked to describe their commitments to the broadcast of programming produced by non-related² independent producers. The Commission's concern is to ensure that independent production companies unaffiliated with the licensee have reasonable access to the licensee's program schedule.
30. The licensees' responses varied as to the amounts of independent production they committed to offer. Some suggested that a specific commitment would be inappropriate, given the nature of the service they provide. Others suggested that the concern underlying the Commission's request did not arise in their particular instance because they did not own, or were otherwise unrelated to, a production company.
31. In its intervention, the CFTPA commented on ten of the 1996 services that exhibited the types of drama, children's, documentary and performance programming that are created by the CFTPA's members. The CFTPA recommended that these licensees generally be required to ensure that at least 75% of their original Canadian programming is the product of independent producers.

² The Commission defined "non-related" in the specialty service licence renewal application form as any production company in which the specialty service, or any of its shareholders, owns or controls, directly or indirectly, less than 30% of the equity.

32. The Commission considers that it is appropriate to establish obligations with respect to the use of independent production. However, a standard approach for all specialty services would not permit the Commission to consider the inherent differences that exist between one genre of specialty programming and another. Accordingly, the Commission has adopted a case-by-case approach, as measured against a 75% benchmark. Because circumstances change, it also considers it reasonable that such obligations be identified for licensees who may not currently be related to any production company.
33. Accordingly, in the decisions that accompany this notice, the Commission has called upon those specialty service licensees that operate in genres other than sports, news and current affairs to ensure that a certain minimum amount of the Canadian content they broadcast consists of programming acquired from non-related producers. The Commission has also stated that there should be an emphasis in such programming on original, first-run programs. An original, first-run program is defined in the *Specialty Services Regulations, 1990* as the “original exhibition of a program that has not been distributed by another broadcasting undertaking licensed by the Commission”.
34. Consistent with the Commission’s objective of promoting greater regional reflection and increasing the exhibition of programming produced outside of the major production centres of Vancouver, Toronto and Montréal, licensees are expected to ensure that their programming is broadly reflective of all of Canada’s regions, and that producers from outside the major production centres have the opportunity to produce programming for the services.

Reporting requirements

35. The CFTPA, DGC, WGC and ACTRA, supported by CEP, recommended that the Commission impose additional reporting requirements on specialty services. Specifically, the CFTPA submitted that licensees should file annual reports on the original productions they commission or acquire, including information concerning the amounts paid as licence fees to related parties and unaffiliated producers. The DGC proposed that the Commission issue annual reports on the expenditures by licensees in each program category.
36. The Commission has considered the views of these interveners, and has concluded that the existing reporting requirements, coupled with the Commission’s ability to call upon a licensee to provide additional information when such information is required, renders additional reporting requirements unnecessary at this time.

Terms of trade agreements

37. In its intervention, the CFTPA raised concerns that some broadcasters are asking independent producers to sign licensing agreements that allow for the exhibition of a program on more than one of the undertakings owned by a broadcaster. According to the intervener:

This push to license multi-platform exhibition rights raises serious concerns for the production community since it undermines the ability of the producer to negotiate separate licensing agreements for each broadcast window, with the licence fee determined by the value of each exhibition window. This type of issue is the primary reason that the CFTPA wishes to develop terms of trade agreements with the various broadcast ownership groups in Canada.

38. The Commission notes the CFTPA's concerns in this matter. It considers that terms of trade agreements between broadcasters and the CFTPA would be to the benefit of all elements of the Canadian broadcasting system, and encourages the establishment of such agreements.

Reflection of Canada's diversity

On-air presence

39. In the case of each broadcasting licensee, the Commission examines the on-air presence of those employees falling within each of the four groups designated under the *Employment Equity Act*, namely women, Aboriginal peoples, persons with disabilities and members of visible minorities. Specifically, the Commission expects licensees to ensure that the on-air presence of members of the four designated groups is reflective of Canadian society, and that members of these groups are presented fairly, accurately and in a manner that is non-stereotypical.
40. As discussed below, the broader initiatives undertaken by each licensee with respect to cultural diversity should be instrumental in addressing the on-air presence of those within the designated groups. Based on data furnished by the 1996 specialty service licensees regarding on-air staff, the Commission notes that women are generally well represented, and that visible minorities are beginning to gain representation in on-air positions. However, far too few on-air positions are filled by Aboriginal persons or persons with disabilities. The Commission expects licensees to take steps to address any gap in the presence in their on-air staff of persons from all four designated groups.

Cultural diversity

41. Several interveners called upon the Commission to ensure that the reflection and portrayal of Canada's diversity continues to be a high priority. The International Council for Diversity in Film and Television, Center for Research – Action on Race Relations, Inner City Films Inc. and L'Institut Pearson – Shoyama Institute all emphasized the importance of the initiatives currently being undertaken by the Commission and the industry, and urged the Commission to ensure that specialty services also contribute to these efforts. They called upon the Commission to require the filing of detailed cultural diversity plans, coupled with annual reports on progress, and to ensure that adequate resources are allocated to the evaluation and monitoring of these plans.

42. All broadcasting licensees, including those that operate specialty services, have a responsibility to contribute to the reflection and portrayal of Canada's cultural diversity in furtherance of the policy objectives contained in section 3(1)(d) of the Act. Specifically, broadcasters share responsibility for assisting in the development of a broadcasting system that accurately reflects Canada's ethno-cultural minorities and Aboriginal peoples. This also means that broadcasters must ensure that the portrayal of such groups, through their presence and participation on-screen, is accurate, fair and non-stereotypical.
43. To assist in achieving these objectives, the Commission expects licensees to file corporate plans on cultural diversity, detailing the measures they will take and procedures they will follow to ensure that their ongoing responsibilities to reflect and portray cultural diversity are properly discharged. The Commission also expects licensees to support the ongoing work of the Task Force for Cultural Diversity in Television initiated by *Representation of cultural diversity on television – Creation of an industry/community task force*, Public Notice CRTC 2001-88, 2 August 2001, and assist in the development and implementation of best practices.
44. Most of those specialty services whose renewal applications are approved in today's decisions belong to corporate groups that have already filed these corporate plans. The Commission expects these licensees to continue to work towards the implementation of these plans. In the case of those licensees that have not yet filed corporate plans, the Commission has notified them in today's decisions of the requirement that they do so by no later than three months following today's date. In addition, all licensees must file annual reports with the Commission, detailing the actions they have taken and the progress they have achieved towards attaining the objectives of their corporate plans.
45. As discussed further below, corporate plans should include detailed, specific initiatives relating to each of the three areas of corporate accountability, reflection of diversity in programming, and community involvement. Corporate plans must also specify how progress will be assessed with respect to the initiatives in each of these areas.

Corporate accountability

46. The Commission considers that integration within a corporate plan of the elements set out below will help ensure that a licensee's corporate culture supports the reflection of cultural diversity in the programming that is presented by the service. In this section of its plan, the licensee should set goals toward creating a corporate culture that supports a programming service reflective of Canada's cultural diversity, including its Aboriginal reality, by:
- identifying a senior executive who will be accountable for diversity practices and ensuring that management becomes more reflective of Canada's diversity;

- setting clear goals for the manager of each undertaking for the reflection of Canada's diversity;
- ensuring that all managers receive appropriate training;
- ensuring that regular opportunities are provided for staff assessment of progress made toward the reflection of diversity, as well as for identification of future challenges; and
- setting out the licensee's plans for hiring and retention of visible minorities and Aboriginal persons, as well as training in this area that it will provide to staff.

Reflection of diversity in programming

47. The licensee's plan should include specific initiatives whose purpose is to ensure that the diversity of Canadian society is reflected fairly and consistently in the programming presented by the service. More particularly, the licensee's plan should address the presence of people from diverse backgrounds, both in programming that the licensee produces and in programming that the licensee acquires. As well, the plan should address the way that Canada's diversity is portrayed in programming.
48. In the case of services that provide news and information programming, the licensee should identify mechanisms to ensure that:
- people from visible minority groups and Aboriginal communities are used as sources, regardless of whether the issue being discussed is particularly related to a specific community;
 - stories about visible minority or Aboriginal communities do not appear solely within the context of coverage of cultural celebrations or reporting of negative stories;
 - on-air personalities reflect Canada's diversity; and
 - reporters and journalists from visible minority and Aboriginal communities are not assigned exclusively to covering stories of principal concern to cultural groups.
49. In the case of services that provide programming other than news and information, corporate plans should address how the portrayal and presence of visible minorities and Aboriginal peoples will be incorporated into all stages of the production and acquisition of such programming, including decisions about which programs will be broadcast. For instance, the plan should address how the licensee will ensure that:

- those responsible for casting make a concerted effort to hire visible minority and Aboriginal actors in leading and recurring roles;
- those responsible for script development ensure that visible minorities and Aboriginal persons are not portrayed in a stereotypical manner; and
- programming from independent producers reflects the presence and accurate portrayal of visible minorities and Aboriginal peoples.

Community involvement

50. The plan should describe the mechanisms that the licensee will put in place to ensure that it receives effective input and feedback from its viewers, and from the public at large, with respect to the reflection of cultural diversity, including Aboriginal cultures, in its programming.

Reflection of persons with disabilities

51. Don Peuramaki of Fireweed Productions Inc. and the National Federation of the Blind: Advocates for Equality (NFB:AE) both filed interventions expressing their particular concern about the lack of reflection and portrayal provided by broadcasters of persons with disabilities. Mr. Peuramaki stated that “People with disabilities should not be ‘out of sight’ nor ‘out of mind’ in this critical industry which shapes the perception of ourselves as a nation.” According to the NFB:AE, “True-to-life portrayals would serve the valuable purpose of public education by showing the abilities of people who have a disability.” The CAB indicated in its appearance at the hearing that the reflection of persons with disabilities is on its agenda and that the CAB’s Joint Social Issues Committee would investigate the issue.
52. The Commission considers that the presence, portrayal and participation of persons with disabilities is an important matter, one that is very much in need of thorough investigation by the broadcasting industry. The Commission notes in particular the role that broadcasters can play in helping create and reinforce positive attitudes towards persons with disabilities. It therefore calls upon the CAB to develop and file a plan, within six months of today’s date, outlining the process it would propose be followed to examine issues surrounding the presence, portrayal and participation of persons with disabilities in television programming. In the meantime, the Commission expects all specialty service licensees to take steps to ensure that members of all four designated groups receive fair on-air representation and, in particular, to redress the obvious absence of persons having disabilities in on-air positions.

53. The Commission notes that some broadcasters have already expanded their definition of diversity to include persons with disabilities. Indeed, the Commission considers that initiatives to make programming more reflective and inclusive of Canada's cultural diversity can, in many cases, be extended or adapted to ensure fair, balanced and inclusive reflection and representation of persons with disabilities. Accordingly, the Commission calls upon these and all other broadcasters to incorporate persons with disabilities into their cultural diversity corporate planning. This should be reflected in the annual reports on cultural diversity filed by broadcasters, beginning with that due to be filed in December 2004.

Service to persons who are deaf or hard of hearing

54. The Commission is committed to improving service to television viewers who are deaf or hard of hearing. Over the period since the Commission announced its policy on closed captioning (see *Introduction to decisions renewing the licences of privately-owned English-language television stations*, Public Notice CRTC 1995-48, 24 March 1995), it has consistently encouraged broadcasters to increase the amount of captioned programming they provide.
55. Those of the 1996 services operating in the English language were generally required to provide closed captioning for 90% of all programming by year seven of their licence terms. There were exceptions to this general approach which took into account the financial resources of licensees. Exceptions were also made where the nature of the proposed service or the limited availability of captioned programming in a particular genre warranted different captioning requirements. In the case of those of the 1996 services operating in the French language, in recognition of the more significant challenges associated with captioning programming in that language, the Commission expected licensees to meet their proposed captioning commitments and encouraged them to exceed these commitments.
56. The English-language specialty services have generally committed to caption 90% of all programming throughout the broadcast day in the new licence term. The French-language services came forward in their applications with meaningful commitments for the provision of closed captioning.
57. In today's renewal decisions, the Commission has generally required the English-language services, by condition of licence, to caption at least 90% of all programming during the broadcast day. In most cases, this condition of licence will come into effect on 1 September 2004. The Commission, however, has provided a measure of flexibility in the case of certain licensees, specifically those earning annual revenues of less than \$10 million, and those whose nature of service would make the immediate achievement of this level of captioning difficult. The licensees of French-language specialty services have been required, by condition of licence, to meet their individual commitments to closed captioning, as set out in their applications, and to achieve 90% captioning by the end of their licence term. Licensees of ethnic specialty services have been expected to provide captioning wherever possible.

58. The Commission also asked all 22 applicants to describe in their renewal applications the measures they have in place or were planning to take in order to ensure the quality, reliability and accuracy of their closed captioning. Concerns about the quality of captioning and the absence of credible standards were expressed in an intervention filed by Mr. J. Clark. The Commission notes that the Canadian Broadcasting Corporation and the CAB have quality standards in place. It expects all of the specialty service licensees to focus on improving the quality, reliability and accuracy of their closed captioning, and to work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet the needs of that community.

Service to persons who are blind or whose vision is impaired

59. Section 3(1)(p) of the Act states, as part of the broadcasting policy for Canada, that “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose”. Accordingly, it is the Commission’s expectation that all broadcasters work toward improving the accessibility of their programming for persons who are blind or whose vision is impaired.
60. Greater programming accessibility can be achieved through the provision of “audio description” and/or of “video description”. Audio description consists of basic voice-over recitations or descriptions of the text or graphic information that is displayed on the screen. Although a measure of sensitivity and creativity on the part of a broadcaster is necessary to ensure the quality and effectiveness of audio description, no special equipment is required. All broadcasters can, and should, provide audio description.
61. Video description, or described video, takes the form of a narrative description of a program’s key visual elements which permits the audience to create a mental image of what is on the screen. It is generally provided using the secondary audio program (SAP) channel.
62. In decisions renewing the licences of the conventional television stations operated by the principal Canadian ownership groups, the Commission introduced requirements for the provision of video description by those television stations serving the largest markets, beginning at a level of two hours per week of priority programming in the first year, and increasing to four hours of such programming in year five. The Commission further required that at least half of the described video programming be original programming.
63. In recent decisions renewing the licences of specialty services, the Commission has expected licensees to provide audio description wherever appropriate, to undertake upgrades to permit the delivery of described video on a SAP channel, and to acquire and broadcast described video programming wherever possible. Where appropriate, the Commission also encouraged specialty service licensees to provide at least one hour per month of described video programming, increasing by an additional hour per month in each successive year of their licence terms.

64. Some parties intervening to the current group of specialty service renewal applications argued that the provision of audio description was essential and filled a basic need. Several interveners wrote to ask for more described video programming, and of better quality than is currently provided. Mr. J. Clark recommended that all broadcasters should be required to air described video programming, and called for the development of industry standards. The NFB:AE also emphasized the importance of described video programming.
65. In its intervention, National Broadcast Reading Service (NBRS) proposed that English-language specialty services generally be called upon to provide levels of described video programming equivalent to those required of conventional television stations. NBRS noted, however, that not all specialty services offer programming for which described video would be of benefit. Accordingly, it recommended that services whose programming includes 80% or more of news and information, sports, or music videos be exempted from requirements to provide described video programming.
66. The Commission is aware that certain of the specialty service licensees whose renewal applications are under consideration have the capacity to provide described video using a SAP channel. Others suggested that they could acquire the necessary capacity to do so. Still others, however, indicated that significant technical upgrades would first be required. Overall, the 22 applications contained few specific commitments to the provision of described video programming.
67. While parties at the May hearing suggested that at least two of the larger BDUs may be ready to pass described video programming through to their subscribers, the Commission expects that others will need to overcome certain technical difficulties and capacity constraints before they are also able to do so. In fact, many of the specialty service licensees indicated that their reluctance to make commitments to provide described video programming was due to concerns regarding the ability of BDUs to make it available to their subscribers. At the hearing, Alliance Atlantis indicated that it and other members of the specialty services industry were working to find a solution to these issues in cooperation with the Canadian Satellite Users Association (CSUA). For its part, the Canadian Cable Television Association (CCTA) suggested that the solution to certain of the cost considerations and technical issues now faced by its members with regard to their delivery of described video programming to subscribers may come about with completion of the transition from analog to digital delivery of programming to BDU subscribers.
68. The Commission acknowledges the present difficulties associated with the delivery of described video programming to BDU subscribers via the SAP channel. It therefore applauds the efforts of the CSUA to seek a solution to these difficulties, and expects all other interested parties to contribute to these efforts.

69. In the meantime, in the accompanying renewal decisions, the Commission has decided to take a case-by-case approach, which follows closely that proposed by NBRS, and which takes into account the nature of each service. The Commission has thus not imposed any specific requirements on services whose programming is music-based, or is oriented towards sports, or news and information. Rather, the Commission's focus has been on services featuring those types of programming, such as drama, documentary and children's programs, that best lend themselves to described video. Accordingly, in the case of such services, and depending on individual circumstances, requirements for the provision of described video programming have been imposed as conditions of licence.
70. In general, the required amount of described video programming is set at two hours per week, increasing after three years to three hours per week. Moreover, a minimum of 50% of the hours of described video programming required on an annual basis must be original programming. However, taking into account the difficulties described above, the Commission has decided that these requirements shall only come into effect on 1 September 2005, with the increase to three hours per week beginning no later than 1 September 2008. This timetable should enable the specialty licensees to develop their programming plans and make the necessary system upgrades. It should also allow BDUs to make whatever system upgrades they require in order that they may pass described video through to their subscribers.

Programming delivered across time zones

71. In *Policy on violence in television programming*, Public Notice CRTC 1996-36, 14 March 1996, the Commission noted concerns expressed by parties that programs originating in certain time zones were being delivered by satellite to viewers in other time zones at hours that would be considered as inappropriate for their broadcast, based on the programs' content. The Commission encouraged broadcasters whose services are distributed over various time zones to be sensitive to their viewers when scheduling programming.
72. Currently, the CAB's *Voluntary code regarding violence in television programming* stipulates that programming containing scenes of violence intended for adult audiences may not be broadcast before the late evening viewing period, defined as 9:00 p.m. to 6:00 a.m. and commonly referred to as the "watershed" period. The CAB's *Code of Ethics* contains a similar provision that "sexually explicit material or coarse or offensive language intended for adult audiences" may only be broadcast between 9:00 p.m. and 6:00 a.m. The codes specify that these guidelines apply to the time zone in which the programming originates.

73. The Commission has received complaints about the availability, outside of the watershed period, of sexually explicit or violent programming intended for adults. Many of these complaints have been about programming distributed in western Canada, but originating in eastern Canada. Some, however, have addressed programming originating in western time zones, but distributed after 6:00 a.m. in eastern time zones. Accordingly, all specialty service licensees were advised in the Notice of Hearing that the Commission would wish to discuss with them the mechanisms and policies that they may have in place to ensure that programming intended for adult audiences and distributed over various time zones is sensitive to viewers' concerns, and respects the watershed period of 9:00 p.m. to 6:00 a.m. in all time zones.
74. Although some of the 1996 services provide separate eastern and western feeds of their programming, most do not. Many of the licensees that provide only a single feed contended that their programming and scheduling policies are sensitive to viewers' concerns about the airing of violent or sexually explicit program material outside of the watershed period. They further suggested that the effectiveness of these policies is strengthened by the use of such other mechanisms as viewer advisories and the increasing availability of V-chip devices in television receivers. The CAB also argued that these existing approaches are sufficient, and that the costs associated with the ideal solution, i.e., a separate feed for each service in each of six different time zones, would be prohibitive, particularly in light of the relatively few complaints on file and the fact that the matter was not specifically raised as a concern in any intervention to the proceeding.
75. The Commission wishes to underscore the importance it places on each broadcaster according proper sensitivity to the concerns of its viewers with respect to the scheduling of programming intended for adult audiences, taking into account the time zone differences between where a program originates and where it is received. The Commission expects licensees to demonstrate responsibility, particularly in responding to any complaint. For the time being, the Commission will not take further measures on this matter. It will, however, monitor the situation, and is prepared to intervene, if warranted, by requiring amendments to applicable codes to ensure that the watershed period is respected regardless of time zone, or by requiring national specialty services to provide time-shifted signals.

Secretary General

This document is to be appended to the licence of each of the services identified in the appendix. 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 Public Notice CRTC 2004-2

| Applicant (Brand name of service) | Broadcasting Decision Number |
|--|-------------------------------------|
| The Comedy Network Inc. (The Comedy Network) | Decision CRTC 2004-6 |
| MusiquePlus Inc. (MusiMax) | Decision CRTC 2004-7 |
| CTV Television Inc. (CTV Newsnet) | Decision CRTC 2004-8 |
| 1163031 Ontario Inc. (Outdoor Life Network) | Decision CRTC 2004-9 |
| The Score Television Network Ltd. (The Score) | Decision CRTC 2004-10 |
| Rogers SportsNet Inc. (SportsNet) | Decision CRTC 2004-11 |
| TELETOON Canada Inc. (Teletoon/Télétoon) | Decision CRTC 2004-12 |
| History Television Inc. (History Television) | Decision CRTC 2004-13 |
| Odyssey Television Network Inc. (Odyssey Television Network) | Decision CRTC 2004-14 |
| CHUM Limited (MuchMoreMusic) | Decision CRTC 2004-15 |
| HGTV Canada Inc. (Home and Garden Television Canada) | Decision CRTC 2004-16 |
| Learning and Skills Television of Alberta Limited (Canadian Learning Television) | Decision CRTC 2004-17 |
| Global Communications Limited and Prime Television Holdco Inc., partners in Prime TV, general partnership (Prime TV) | Decision CRTC 2004-18 |
| CHUM Limited (Space: The Imagination Channel) | Decision CRTC 2004-19 |
| South Asian Television Canada Limited (ATN) | Decision CRTC 2004-20 |
| CHUM Limited and 3661458 Canada Inc., partners in Pulse24, general partnership (CablePulse24) | Decision CRTC 2004-21 |

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|---|-----------------------|
| Astral Broadcasting Group Inc. (Canal Vie) | Decision CRTC 2004-22 |
| Group TVA inc. (Le Canal Nouvelles) | Decision CRTC 2004-23 |
| CTV Television Inc. (Report on Business Television) | Decision CRTC 2004-24 |
| CHUM Limited (Star!-TV) | Decision CRTC 2004-25 |
| CTV Television Inc. (Talk TV) | Decision CRTC 2004-26 |
| YTV Canada Inc. (Treehouse TV) | Decision CRTC 2004-27 |