



Broadcasting Decision CRTC 2004-27

Ottawa, 21 January 2004

YTV Canada Inc.
Across Canada

*Application 2002-0907-4
Public Hearing in the National Capital Region
26 May 2003*

Treehouse TV – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Treehouse TV, 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 YTV Canada Inc. (YTV), a wholly owned subsidiary of Corus Entertainment Inc. (Corus), for the renewal of the broadcasting licence for the national, English-language specialty television service known as Treehouse TV (Treehouse).
2. The Commission's general analysis with respect to its consideration of this and other applications heard at the 26 May 2003 Public Hearing for the licence renewal of specialty television services is set out in *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004 (Public Notice 2004-2).
3. The Commission received 38 interventions specifically in support of Treehouse'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 Treehouse 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.

Expenditures on Canadian programming

6. Treehouse's current condition of licence requires it to expend 32% of the previous year's total revenues on Canadian programming expenditures (CPE). YTV submitted that an increase in Treehouse's CPE requirement was not warranted at this time given the service's limited ability to generate advertising revenue, since it may only broadcast two minutes per hour of sponsorship type advertising between 6 a.m. and 9 p.m. YTV also provided financial projections to illustrate the negative impact that it believed a 50% CPE requirement would have on Treehouse. It noted that such a requirement would result in profit levels that are well below those achieved by other specialty services.
7. The Commission notes that Treehouse has seen a positive financial performance in all four reporting years since launching in 1998, and that the service expects that this performance will continue over the next licence term. Therefore, while the Commission acknowledges that Treehouse has restricted access to advertising revenue, it is of the view that some flexibility exists to increase the service's CPE requirement.
8. 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 36% 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.

Nature of service

9. Currently, Treehouse's conditions of licence with regard to its nature of service do not explicitly identify those categories from which it may draw programming. When asked to identify those categories that it thought best encompassed Treehouse's programming, YTV identified the following as being most suitable, given Treehouse's nature of service:
 - 5(a) Formal education and preschool
 - (b) Informal education/Recreation and leisure
 - 7 Drama and comedy
 - 8(a) Music and dance other than music video programs or clips
 - (b) Music video clips
 - (c) Music video programs

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

- 9 Variety
- 11 General entertainment and human interest
- 12 Interstitials

Intervention

10. CHUM Television (CHUM), a division of CHUM Limited, expressed concern that adding category 8 to the list of categories from which Treehouse may draw programming would permit Treehouse to broadcast music videos and other music-related programming that could be targeted at adults potentially permitting the service to be competitive with MuchMusic. In addition, CHUM noted that since Treehouse “must broadcast programming targeted at children under the age of six between 6 a.m. and 9 p.m., all of this programming, except those programs primarily comprised of drama, would be classified as category 5(a) programming.”
11. In response to CHUM’s concerns, YTV stated that it would accept a condition of licence stipulating that “not more than 5% of programs broadcast between 9 p.m. and 6 a.m. shall be drawn from category 8 programming which targets an audience other than preschoolers.”

The Commission’s analysis and determination

12. The Commission is of the view that incorporating the program categories submitted by YTV into Treehouse’s nature of service condition of licence will not broaden the nature of service, but will make Treehouse’s nature of service more specific by removing its current ability to draw programming from all categories.
13. With respect to CHUM’s concern that adding category 8 to the list of categories from which Treehouse may draw programming would permit the service to broadcast programming that could be targeted at adults, the Commission notes that all programming must correspond to Treehouse’s nature of service condition of licence, which states that “all programs broadcast by the licensee between 6 a.m. and 9 p.m. shall have as its target audience children up to six years of age.” The Commission therefore considers it appropriate to include category 8 in the list of categories from which Treehouse may draw programming. The Commission considers, however, that it is also appropriate to accept YTV’s suggestion and to impose a condition of licence that not more than 5% of the programs broadcast between 9 p.m. and 6 a.m. shall be drawn from category 8 programming that targets an audience other than preschoolers. A **condition of licence** to this effect is set out in the appendix to this decision.
14. Finally, the Commission notes that Treehouse’s current conditions of licence permit the service to broadcast public service announcements and infomercials. Accordingly, the Commission is of the view that categories 13 Public service announcements and 14 Infomercials, promotional and corporate videos should be added to the list of categories from which Treehouse may draw programming.

15. In light of the above, the Commission determines that it is appropriate to specify that Treehouse may draw its programming from program categories 5(a), 5(b), 7, 8, 9, 11, 12, 13 and 14. A **condition of licence** is set out in the appendix to this decision. The Commission notes that all such programming must continue to be consistent with Treehouse's nature of service, which was described in *TreeHouse TV – Approved*, Decision CRTC 96-603, 4 September 1996, as follows:

The licensee proposes to provide commercial-free programming for preschool children up to six years of age, between the hours of 6 a.m. and 9 p.m. After 9 p.m., programs will be targeted to families, parents and caregivers, and will contain advertising.

Canadian independent production

16. In its application, YTV submitted that a condition of licence requiring Treehouse to broadcast a minimum percentage of programming produced by independent producers was not necessary. It stated that, according to the Canadian Film and Television Production Association's (CFTPA's) *Profile 2003*, the amount of preschool programming being produced could diminish over the period of Treehouse's next licence term. Furthermore, YTV submitted that because of its 70% Canadian content requirement, Treehouse must acquire Canadian programming from a variety of sources. YTV expressed concern that "since there are no assurances regarding the ongoing supply of affordable preschool programming from the independent sector," Treehouse could have difficulty complying with a condition of licence requiring that a certain percentage of programming be produced by independent production companies.
17. Nevertheless, YTV was willing to commit to an expectation that at least 25% of Treehouse's programming schedule would include programming that is commissioned or acquired from independent producers.
18. As stated in Public Notice 2004-2, the CFTPA recommended in its intervention that Treehouse, 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.
19. In response, YTV argued that a number of reasons made it unnecessary for Treehouse to be required to ensure that at least 75% of its Canadian programming be the product of independent producers. YTV reiterated that Treehouse's high Canadian content level makes it essential for Treehouse to acquire Canadian programming from a variety of Canadian sources. YTV further stated that the amount of children's programming being produced in Canada has decreased, making it necessary that Treehouse be able to obtain "high quality and affordable preschool programming from a number of sources, including our affiliated production company, Nelvana Limited."
20. As noted in Public Notice 2004-2, the Commission wishes to ensure that production companies unaffiliated with the licensees of specialty services have reasonable access to the licensees' program schedules. This is as important in the genre of children's

programming as in any genre. Accordingly, consistent with the approach outlined in Public Notice 2004-2, the Commission considers that it is reasonable to expect YTV, for the duration of the new licence term, to ensure that a minimum of 75% of all original, first-run, Canadian programming broadcast on Treehouse is acquired from non-related producers.

Original production

21. In its original licence application, YTV committed to spend a total of \$3.6 million on program acquisition over the seven-year licence term and to commission a total of 325 half-hours of original Canadian production over the same seven-year period. In its current application, YTV stated that, by the end of Treehouse's current licence term, it will have commissioned 534 half-hours of original Canadian programming and will have spent \$12 million on original preschool programming, clearly surpassing the expectations set out in the original licence. YTV noted that, of the 534 half-hours, 208.6 (39%) will have been commissioned from independent producers.
22. With respect to the carrying forward of this commitment into the next licence term, YTV argued that the specific commitments were no longer appropriate due to the increasingly competitive environment, particularly in children's programming.
23. Notwithstanding YTV's comments, the Commission considers that it is appropriate to carry forward into the new licence term a minimum commitment to new production. Accordingly, the Commission expects the licensee to continue to commission at least 325 half-hours of original Canadian production over the new licence term.

Regional reflection and production

24. In its application, YTV argued that Treehouse's programming is not suited to the concept of regional reflection. It stated that preschoolers are not aware of geographic or regional diversity and that, as a result, most preschool programs have fantasy settings. In support of its argument, YTV also noted that children's programming is exempted from guidelines restricting funding to projects with primarily Canadian settings even though these guidelines are an entry requirement for all other genres of programming.
25. YTV also stated that Treehouse will continue to work with producers outside of the major production centres over the course of the new licence term.
26. The Commission acknowledges the arguments presented by YTV with respect to regional reflection and notes its continued commitment to work with producers from outside the major centres. The Commission expects the licensee to continue to provide opportunities for producers working outside the major production centres to supply programming for the service.

Cultural diversity

27. 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.
28. The Commission notes that Treehouse is subject to the Corus corporate cultural diversity plan, which sets out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to presence and portrayal of cultural diversity. The Commission expects YTV to continue to contribute to cultural diversity and to implement the commitments set out in its corporate cultural diversity plan. As discussed in Public Notice 2004-2, the Commission further expects the licensee to incorporate persons with disabilities into its cultural diversity corporate planning and to ensure that this is reflected in its annual reports on cultural diversity, beginning with the report to be filed in December 2004.

Employment equity and on-air presence

29. 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.
30. 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.

Service to persons who are deaf or hard of hearing

31. Treehouse's current closed captioning requirement is as follows:

In accordance with the policy announced in Public Notice CRTC 1996-120 and recognizing the particular challenges associated with providing closed captioning in programming aimed at preschoolers, the Commission requires the licensee to close caption not less than 90% of the programming it broadcasts that is not targeted to preschoolers, during the broadcast day, by the end of the licence term.
32. In its application, YTV stated that Treehouse's original requirement should be sufficient for the new licence term. YTV added that, when the Commission originally licensed Treehouse, it recognized "the challenges associated with providing closed captioning in programming aimed at pre-schoolers" and concluded that it was not necessary to require closed captioning of this programming. YTV further submitted that it was aware of no new circumstances that would bring about a different conclusion at this time.

33. YTV stated that, in 2001-2002, 56% of all programming broadcast on Treehouse was closed captioned, which is more than double the amount of closed captioned programming it broadcast in its first year of operation. YTV committed to increase closed captioned programming on Treehouse to 60% by the end of the seventh year of its new licence term. It added that a condition of licence imposing a 90% commitment would present a “significant financial burden” on the service.

Intervention

34. One intervener, Joe Clark, submitted that Treehouse should be subject to the 90% closed captioning requirement. Mr. Clark stated that, although preschoolers may not be literate, “older kids and preschoolers’ parents are literate.” For this reason, Mr. Clark asked that preschool programs be closed captioned.

The Commission’s analysis and determination

35. 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.
36. The Commission is of the view that the captioning of preschool programming is important, in part to ensure that parents are able to access the programming their children watch. The Commission further notes that older children would also benefit. Furthermore, the Commission considers that the provision of an increased level of closed captioning earlier in the licence term would not represent an undue financial hardship for YTV.
37. Accordingly, consistent with its commitment to improving service to viewers who are deaf or hard of hearing, the Commission is imposing a **condition of licence** requiring the licensee to close caption not less than 60% 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. The Commission also expects that the licensee will close caption not less than 90% of all programming aired during the broadcast day, beginning not later than 1 September 2008.
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 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. YTV indicated that Treehouse does not generally post textual or graphic information on screen and therefore should not be subject to a requirement with respect to audio description. In the rare case where Treehouse does post a textual reference in a program, YTV stated that a voice-over would describe the text.
42. YTV also stated that video description is unsuitable for Treehouse's programming. It explained that preschool programs do not lend themselves well to descriptive video since many are set in a fantasy world. Descriptions of such programming could be confusing to preschoolers whose vision is impaired given that it would sometimes include concepts such as spatial organization, colour discrimination and shape differentiation, which are difficult to understand on an auditory basis, without any visual clues. YTV added that the descriptions would not include all the elements of a story as it would be told by a parent or caregiver.
43. The Commission acknowledges YTV's arguments as to why video description might be challenging for a service that airs programs aimed mainly at preschoolers. Nevertheless, while describing the sometimes fantastic world of make-believe poses some challenges, the Commission considers that video description would be appropriate on Treehouse.
44. Moreover, the Commission notes that YTV's application as a whole puts considerable emphasis on the role of the caregiver or parent in a child's educational development. The Commission is therefore of the view that there is a distinct benefit to having video description programming on Treehouse so that parents or caregivers whose vision is impaired can follow along and interact with their children.
45. Consistent with its approach as set out in Public Notice 2004-2, and given the nature of the service and the programming it provides, the Commission has determined that it would be appropriate to impose a **condition of licence** requiring the licensee to provide a minimum of two hours of described video programming each week, beginning 1

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.

September 2005, and to increase that amount to a minimum of three hours each week, beginning 1 September 2008. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service. This **condition of licence** is set out in the appendix to this decision.

46. The Commission further expects that, during the new licence term, the licensee will:
- provide audio description wherever appropriate;
 - acquire and broadcast the described versions of a program wherever possible; and
 - take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

Compliance with industry codes

47. In accordance with its usual practice for specialty television services, the Commission is imposing **conditions of licence** requiring the licensee to adhere to industry codes related to sex-role portrayal, advertising to children, and the depiction of violence in television programming.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2004-27

Conditions of licence

1. (a) The licensee shall provide a national English-language specialty television service.
 - (b) All programs broadcast by the licensee between 6 a.m. and 9 p.m. shall have as their target audience children up to six years of age.
 - (c) 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:
 - 5 (a) Formal education and pre-school
 - (b) Informal education/Recreation and leisure
 - 7 Drama and comedy
 - (8) (a) Music and dance other than music video programs or clips
 - (b) Music video clips
 - (c) Music video programs
 - 9 Variety
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
 - (d) A minimum of 80% of the programs broadcast by the licensee between 9 p.m. and 6 a.m. that is drawn from category 7 shall be copyrighted at least 10 years prior to the broadcast year in which it is broadcast by the licensee.
 - (e) Not more than 5% of the programs broadcast between 9 p.m. and 6 a.m. shall be drawn from category 8 programming that targets an audience other than preschoolers.
2. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 70% of the broadcast day, and not less than 60% of the evening broadcast period.
 3. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993 and in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice 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 32% 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 36% 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 (c), the licensee shall not distribute more than two (2) minutes of advertising material during each clock hour between 6 a.m. and 9 p.m.
- (b) Subject to subsection (c), the licensee shall not distribute more than twelve (12) minutes of advertising material during each clock hour between 9 p.m. and midnight.

- (c) 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.
- (d) The licensee shall not distribute any paid advertising material other than paid national advertising.
- (e) The licensee shall not distribute any paid advertising material longer than fifteen (15) seconds in duration between 6 a.m. and 9 p.m.
- (f) All advertising material distributed by the licensee between 6 a.m. and 9 p.m. shall conform to the following definition of restricted advertising originally set out in Public Notice CRTC 1992-38:

The Commission will permit simple statements of sponsorship that identify the sponsors of a program or of the station. Such statements may incorporate the names of the sponsor, the business address, hours of business and a brief general description of the types of services or products that the sponsor provides, including the price, name and brand name of the product. Such statements must not contain references to convenience, durability or desirability or contain other comparative or competitive reference.

- 5. The licensee shall charge each exhibitor of this service, where the service is distributed as part of the basic service, a maximum monthly wholesale rate of \$0.20 per subscriber.
- 6. The licensee shall provide closed captioning for not less than 60% of all programs aired during the broadcast day, beginning not later than 1 September 2004.
- 7. In each broadcast year of the licence term, the licensee shall provide a minimum of two (2) hours of described video programming during each broadcasting week, beginning not later than 1 September 2005, increasing to a minimum of three (3) hours beginning 1 September 2008. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service.
- 8. (a) Except as provided in subsection (b), in any month, none of the programs broadcast by the licensee shall be broadcast by the specialty service YTV.
- (b) For the period of 1 December to 31 December in each broadcast year, the licensee may broadcast a maximum of twenty (20) hours of programming from categories 5(a), 7 and 11, featuring a Christmas or Chanukah theme, and broadcast on YTV.

9. 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).

10. 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.

11. 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," "clock hour" and "evening broadcast period" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*. The term "broadcast week" shall have the same meaning as that set out in the *Radio Regulations, 1986*. The term "month" shall mean any calendar month; "paid national advertising" shall mean advertising material as defined in *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service.