



Broadcasting Decision CRTC 2004-302

Ottawa, 30 July 2004

Fairchild Television Ltd.
Across Canada

*Application 2003-1893-2
Public Hearing in the National Capital Region
17 May 2004*

Fairchild Television – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Fairchild Television, from 1 September 2004 to 31 August 2011. 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 Fairchild Television Ltd. for the renewal of the broadcasting licence for the national, ethnic specialty television service known as Fairchild Television (Fairchild TV). The licensee also requested an amendment to its licence that would permit it to broadcast a limited amount of local programming in Vancouver and Toronto.
2. The Commission received numerous interventions in support of Fairchild TV's licence renewal application and four interventions in opposition to the licensee's request for authorization to broadcast local programming inserts in Vancouver and Toronto. The proposed amendment and the interveners' concerns are discussed later in this decision in the section entitled "Local programming inserts".
3. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence for Fairchild Television, from 1 September 2004 to 31 August 2011. The licence will be subject to the conditions specified therein and to the **conditions** set out in the appendix to this decision.

Nature of service

4. Fairchild TV is a national ethnic specialty service having as its primary target audience, the Chinese communities of Canada. The Commission notes that approximately 99% of Fairchild TV's programming is in the Cantonese language and the remaining 1% of programming is in the Mandarin language.

5. Fairchild TV's current condition of licence pertaining to its nature of service states:

The licensee shall provide a national discretionary specialty service that consists of programming of Type A, as defined in Schedule II to the *Specialty Services Regulations, 1990*, having as its target audience the Chinese-speaking communities of Canada.

6. The term Type A programming corresponds with the definitions found in the Commission's policy on ethnic broadcasting set out in *A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity*, Public Notice CRTC 1985-139, 4 July 1985. The Commission reviewed the policy in 1999 and published *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999 (the Ethnic Policy). The policy came into effect in 1999. Under the current policy, what was formerly referred to as Type A programming is now known as third-language programming.
7. As part of the licence renewal process, the licensee stated that it would accept a revision to its current condition of licence describing its nature of service so as to ensure consistency with the Ethnic Policy. Accordingly, the Commission has amended Fairchild TV's condition of licence 1 to read as follows:

The licensee shall provide a national ethnic specialty service, consisting of third-language ethnic programming directed to the Chinese-speaking communities of Canada.

8. The full **condition of licence** on the nature of service is set out in the appendix to this decision.

Local programming inserts

The licensee's request

9. The licensee requested an amendment to its licence in order to authorize it to broadcast a limited amount of separate local programming in Vancouver and Toronto. This local programming would consist of no more than 7% of the broadcast day, averaged monthly, and would be limited to local news, community bulletins and special events programming. The licensee stated that these inserts of local programming would allow it to provide timely updates to its news, to report on local breaking news stories and to provide more relevant, local programming for its viewers, many of whom are not proficient in English or French.

10. In *Proposal to broadcast separate local programming in Vancouver and Toronto*, Broadcasting Decision CRTC 2002-351, 6 November 2002, the Commission denied a previous similar request by the licensee. The Commission stated that it was concerned about the possible effects of approving the licensee's request shortly after the licensing in 2002 of new ethnic television stations in Vancouver and Toronto¹ and at a time when these new stations were just coming on the air and seeking to find an audience.

Concerns of the interveners

11. Interventions in opposition to the licensee's proposal to insert up to 7% local programming in each broadcast day were filed by Mr. Matthew Mung, Channel M, Global Television Network Inc. (Global) and Rogers Media Inc. (Rogers).
12. Mr. Matthew Mung submitted that the licensee's proposal with respect to local programming inserts lacked clarity.
13. Each of the broadcasters that filed an intervention is involved in ethnic broadcasting. Channel M (CHNM-TV), a new ethnic television station that began broadcasting in Vancouver in June 2003, is licensed to the partners of the Multivan Broadcast Limited Partnership. Global Communications Inc., a subsidiary of Global, is the licensee of ethnic television station CJNT-TV Montréal. Rogers Broadcasting Limited, a subsidiary of Rogers, is the licensee of two ethnic television stations: OMNI.1 and OMNI.2 Toronto. OMNI.2 began operation in September 2002.
14. These interveners expressed concern that approval of the licensee's proposal would allow Fairchild TV to operate, not as a national service, but as a national network with local affiliates in Vancouver and Toronto. As such, Fairchild TV would be competing with local ethnic television stations in those communities. The broadcasters noted that, as a national service, Fairchild TV has access to both advertising and subscription revenues without having to provide programming in many languages for a variety of ethnic groups, as ethnic television stations must do.
15. Global was also specifically concerned about whether Fairchild would broadcast local programming inserts for Montréal.

¹ In *New multilingual ethnic television station to serve Vancouver*, Broadcasting Decision CRTC 2002-39, 14 February 2002, the Commission authorized the operation of a new ethnic television station in Vancouver. Subsequently, in *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82, 8 April 2002, the Commission authorized the operation of a new ethnic television station in Toronto.

The licensee's response

16. In response, the licensee stated that the objective of its proposal is not to increase its local advertising revenues, or to transform Fairchild TV into a national network with two local affiliates. The licensee affirmed that its objective is to provide more relevant programming for its viewers in order to maintain its subscription revenues. In addition, the licensee argued that approval of its proposal would have a minimal impact on existing television stations, whether ethnic or conventional, because the amount of Fairchild TV's local advertising inventory would not change
17. In response to Global's intervention, the licensee confirmed that it would provide local programming inserts only for the Toronto and Vancouver markets.

The Commission's analysis and determination

18. The Commission notes that the new ethnic television stations approved in 2002 for Vancouver and Toronto are now implemented and have had sufficient time to establish themselves in their respective markets. In the Commission's view, allowing the licensee to offer up to 7% local programming during the broadcast day, averaged monthly, would not have an undue impact upon other broadcasters. Furthermore, in the Ethnic Policy, the Commission emphasized that ethnic broadcasters have an important responsibility to reflect local issues and concerns. In this regard, the Commission notes that Fairchild TV is already providing a certain amount of local content consisting of news and community bulletins, even though this local content is broadcast nationally.
19. The Commission is satisfied that approval of the licensee's request will benefit Fairchild TV's viewers, particularly those in Vancouver where coverage of news events is delayed because of time-shifting, by providing them with more timely and focused coverage of local news, community events and local special events programming. Accordingly, the Commission **approves** the licensee's request for an amendment to its licence in order to authorize it to broadcast separate local programming, in place of its national service to affiliated broadcasting distribution undertakings, provided that the hours dedicated to such local programming do not exceed 7% of the licensee's programming during each broadcast month. A **condition of licence** to that effect is set out in the appendix to this decision.

Logging practices

20. The Commission notes that, during the current licence term, the licensee experienced significant logging problems. Specifically, it logged its third-language programming incorrectly. The licensee explained that the inconsistencies were a result of problems related to its computerized logging system and a misunderstanding regarding its logging requirements after the Ethnic Policy came into effect.
21. The Commission notes that, since being made aware of the logging problems, the licensee has corrected all the logs that had presented problems. In addition, the licensee stated that it is in the process of migrating to a newer logging system.

22. The Commission recognizes the licensee's efforts to correct its logging problems. The Commission, nevertheless, reminds the licensee of the importance of keeping accurate logs and expects Fairchild TV to continue to monitor its logging practices to ensure that it meets the regulatory requirements at all times.

Expenditures on Canadian programming

23. During the current licence term, the licensee has been required, by condition of licence, to expend on Canadian programs a minimum of 29% of the previous broadcast year's gross revenues.
24. The Commission notes that Fairchild TV's current level of expenditures and those of its sister specialty television service, Talentvision, which must also expend 29% of the previous years' gross revenues on Canadian programs, are the highest of all the ethnic analog services. The Commission notes that the licensee's historical average profit before interest and tax (PBIT) margin during its current licence term has been 11.46%.
25. Taking this into account and the contributions made by other ethnic specialty services, the Commission has determined that an increase in the licensee's current requirement is not warranted at this time. Accordingly, the Commission requires the licensee to maintain the level of its Canadian programming expenditures at 29% of the previous broadcast year's gross revenues. A **condition of licence** to this effect is set out in the appendix to this decision.

Exhibition of Canadian programming

26. The licensee must currently devote, by condition of licence, not less than 30% of the broadcast day, from 6 a.m. to midnight, and not less than 40% of the evening broadcast period, from 6 p.m. to 11 p.m., to the exhibition of Canadian programs.
27. Given the licensee's relatively high levels of Canadian content, particularly in comparison with those of other ethnic specialty services, the Commission has determined that an increase in the licensee's requirement is not warranted and has decided to maintain the present levels of Canadian programming required by condition of licence: 30% of the broadcast day, and 40% of the evening broadcast period. A **condition of licence** to this effect is set out in the appendix to this decision.

Canadian independent production

28. The licensee stated that there are few Canadian independent producers who are able to provide programming in Mandarin or Cantonese efficiently, affordably and of appropriate quality. The licensee added that over 96% of its Canadian programming is station produced. As a result, Fairchild TV does not generally commission programming from the independent production sector.

29. The Commission, nevertheless, expects the licensee to acquire programming from Canadian independent producers, wherever possible, during the new licence term.

Regional reflection and production

30. The licensee noted that, in addition to the programming produced in its centres in Toronto and Vancouver, its Calgary office also produces a weekly half-hour show.
31. The Commission expects the licensee to ensure that the programming aired by Fairchild TV reflects all of Canada's regions. While the licensee has noted a scarcity of independent producers who can provide programming in Mandarin or Cantonese, the Commission encourages Fairchild TV to provide opportunities for producers working outside the major production centres to supply programming for the service.

Cultural diversity

32. The licensee stated that it encourages its viewers to cherish their heritage, respect other cultures and embrace the Canadian lifestyle and that, as the licensee of an ethnic specialty service, it is sensitive to issues about accurate and fair portrayal of minority groups. Further, the licensee indicated that it has made its production controller responsible for ensuring that producers exercise appropriate sensitivity when dealing with cultural, racial and heritage issues.
33. The Commission expects all broadcasters, including the licensees of ethnic services, to endeavour, through their programming and employment opportunities, to reflect Canada's ethno-cultural minorities, Aboriginal peoples as well as persons with disabilities. While recognizing that Fairchild TV's programming is targeted specifically to Chinese-language communities, the Commission expects the licensee to ensure that the on-screen portrayal of all groups is accurate, fair and non-stereotypical.

Employment equity and on-air presence

34. 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.
35. With respect to on-air presence, the Commission expects the licensees of specialty television services to ensure that members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) are reflective of Canadian society, and that members of these groups are presented fairly and accurately. The Commission notes the initiatives that Fairchild TV has undertaken with regard to on-air representation including monitoring the hiring of persons from the designated groups.

Service to persons who are deaf or hard of hearing

36. 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.
37. The licensee stated that it would be unable to offer closed captioning for its programming because close captioning software is not available for programming in the Mandarin and Cantonese languages.
38. The Commission recognizes the challenges faced by the licensee in obtaining and/or providing closed captioning for programming in Mandarin and Cantonese. The Commission, nevertheless, encourages the licensee to explore ways to improve accessibility of its programming for persons who are deaf or hard of hearing.

Service to persons who are blind or whose vision is impaired

39. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description and video description (also known as described video).
40. In its licence renewal application, the licensee stated that it does have the technical capability to provide described video via the secondary audio program. It explained, however, that, since it is not possible to acquire Mandarin- and Cantonese-language programming with description, any described video of Fairchild TV's programming would have to be provided in-house. The licensee submitted that providing described video in-house would not be financially feasible, given the size of the market.
41. With respect to audio description, the licensee stated that its policy is to attempt to provide voice-overs wherever there are visuals. The Commission expects Fairchild TV to continue to provide audio description, wherever appropriate, and to take steps to make its programming more accessible to people who are blind or whose vision is impaired.

Programming across time zones

42. The licensee stated that, although it does not currently offer programs intended for adult audiences, it does have a policy in place to ensure that any future scheduling of such programs will respect the watershed hours of 9:00 p.m. to 6:00 a.m. in all time zones. The policy stipulates that any programming intended for adult audiences must begin after 10 p.m. in Toronto in order to respect the watershed hour in the Prairies. In addition, Fairchild TV's programming that originates in Toronto is time-shifted by three hours for broadcast in Vancouver.

43. The Commission expects the licensee to continue to demonstrate responsibility in the scheduling of its programming, taking into account time zone differences between where a program originates and where it is received.

Compliance with industry codes

44. 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 2004-302

Conditions of licence

1. The licensee shall provide a national ethnic specialty service, consisting of third-language ethnic programming directed to the Chinese-speaking communities of Canada.
2. The licensee shall devote to the broadcast of Canadian programs not less than :
 - (i) 40% of the time from 6:00 p.m. to 11:00 p.m. and
 - (ii) 30% of the broadcast day.
3. The licensee may distribute separate local programming in place of its national service to affiliated broadcasting distribution undertakings, provided that the hours dedicated to such local programming do not exceed 7% of the licensee's programming during each broadcast month.
4. 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 each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 29% of the gross revenues derived from the operation of this service during the previous broadcast year.
 - (b) 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.
 - (c) 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.
 - (d) Notwithstanding paragraphs (b) and (c) 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.
5. The licensee shall broadcast, in each semester of its licence term, a minimum of 250 hours of first-run non-Canadian programs produced by, and acquired from, sources other than TVB of Hong Kong (TVB) or any of its subsidiaries, which programming shall constitute not less than 20% of the total number of hours of non-Canadian programs broadcast during that semester.
 6. The licensee shall, in each broadcast year, expend on non-Canadian programs produced by, and acquired from, sources other than TVB or its subsidiaries, an amount representing not less than 15% of its total expenditures on non-Canadian programs.
 7. The licensee shall submit a report, by 30 November 2004 and annually thereafter throughout the licence term, containing data setting out the expenditures it has made to comply with the requirements specified in each of conditions of licence 5 and 6 above.
 8.
 - (a) During each clock hour, the licensee shall broadcast not more than twelve minutes of advertising material of which no more than six minutes shall be local commercial messages.
 - (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 number of minutes that would otherwise be allowed per clock hour.
 - (c) In addition to the twelve minutes of advertising material referred to in paragraph 8(a), the licensee may broadcast partisan political advertising during an election period.
 9. The licensee shall submit a report by 31 August of each year of the licence term, updating the membership information on file with the Commission and outlining the activities of its advisory committees during the preceding year.

10. The licensee shall ensure that the policy guidelines that establish the mechanisms the licensee will use to ensure balance in programming, and in the procedures it will follow in dealing with the complaints by the public on this matter and on other aspects of its service, including the issue of violence, which were accepted by the Commission and made public, remain in place.
11. 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 accepted 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).
12. The licensee shall adhere to the provisions of the CAB's *Broadcast Code for Advertising to Children*, as amended from time to time and accepted by the Commission.
13. 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 accepted 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.
14. The licensee shall prohibit the participation as a director or as an officer of the licensee company, of any director, officer, nominee, employee or representative of Television Broadcasts Limited, Condor Entertainment B.V., their affiliates or subsidiaries, or of any person associated with these companies or with whom the licensee has entered into an agreement for the acquisition of programs.
15. The licensee shall provide the Commission with any changes to the names and biographical descriptions of the members of its board of directors filed with the Commission. The licensee shall notify the Commission before any change is effected in the composition of its Board of Directors, or in its ownership or in the ownership of its principal shareholder, Happy Valley Investments Ltd.

For the purposes of these conditions, the terms "broadcast day", "broadcast month", and "broadcast year" shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*.

"Clock hour" shall mean a period of 60 minutes beginning on each hour and ending immediately prior to the next hour.

“Expend on acquisition” shall mean:

- (a) expend to acquire exhibition rights for the licensed territory, excluding overhead costs;
- (b) expend on the following items associated with the production of a program:
 - talent fees (on air and other)
 - directly-attributable salaries and benefits
 - film and tape
 - studio sets, properties and other production materials
 - use of remote and other production facilities
 - delivery of remote programs to the satellite uplink or main studio; and
 - any other matter directly related to the production of a program; or
- (c) expend on the production of filler programming, as defined in section 2 of the *Pay Television Regulations, 1990*, including direct overhead costs.

“Expend on investment” shall mean expend for the purposes of an equity investment or an advance on account of an equity investment, but not overhead costs or interim financing by way of a loan.

“Semester” shall mean each six-month period beginning 1 March and 1 September.

“Officer” shall mean the chairperson, president, vice-president, secretary, treasurer, comptroller, general counsel, general manager, managing director or any individual who performs functions for the licensee similar to those normally performed by an individual occupying any such office, and each of the licensee’s five highest paid employees, including the above.