



## Broadcasting Decision CRTC 2023-288

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References: Part 1 licence renewal applications posted on 21 March 2023

Ottawa, 25 August 2023

### **Hollywood Suite Corp. and Hollywood Suite Inc.**

Across Canada

*Public record: 2022-0863-6, 2022-0864-4, 2022-0865-2 and 2022-0866-0*

### **Hollywood Suite 70s Movies, Hollywood Suite 80s Movies, Hollywood Suite 90s Movies and Hollywood Suite 2000s Movies – Licence renewals**

#### **Summary**

The Commission **renews** the broadcasting licences for the national, English-language discretionary services Hollywood Suite 70s Movies, Hollywood Suite 80s Movies, Hollywood Suite 90s Movies and Hollywood Suite 2000s Movies, from 1 September 2023 to 31 August 2028.

The Commission **denies** the licensee's request to carry over excess Canadian programming expenditures from the current licence term into the next licence term.

#### **Applications**

1. The Commission has the authority, pursuant to subsections 9(1), 9.1(1) and 11.1(2) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*, and to make orders respecting expenditures.
2. Hollywood Suite Corp. and Hollywood Suite Inc. (collectively, the licensee) filed applications to renew the broadcasting licences for the national, English-language discretionary services Hollywood Suite 70s Movies, Hollywood Suite 80s Movies, Hollywood Suite 90s Movies and Hollywood Suite 2000s Movies (collectively, the Hollywood Suite services), which expire 31 August 2023. The Commission did not receive any interventions in regard to these applications.
3. The licensee requested that the current 10% Canadian programming expenditure (CPE) requirement for each service be maintained, but that it be allowed to carry over excess CPE from the current licence term to the next licence term.

## Carry-over of Canadian programming expenditures

4. Pursuant to subsection 9(1) of the old *Broadcasting Act*, the Commission had the authority to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deemed appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of that Act.
5. Paragraph 3(1)(e) of the *Broadcasting Act* declares that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming. The old *Broadcasting Act* also provided that private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming (subparagraph 3(1)(s)(i) of the old *Broadcasting Act*).
6. Pursuant to the authority granted in subsection 9(1) of the old *Broadcasting Act*, and consistent with the provisions set out in paragraph 3(1)(e) and former subparagraph 3(1)(s)(i), in the appendix to Broadcasting Regulatory Policy 2018-312, the Commission imposed a condition of licence on each of the Hollywood Suite services requiring the licensee to devote, in each broadcast year, not less than 10% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming. As noted above, in its application, the licensee requested that this 10% CPE requirement be maintained, but also requested that it be allowed to carry over excess CPE from the current licence term to the next licence term.
7. The licensee referred to the difficulties it faced during the early years of operation, beginning in 2011, which were brought on by the launch of Netflix in Canada, an explosion of online content (legal and illegal), the beginning of cord shaving/cutting by consumers, and BCE Inc.'s purchases of CTV and Astral Media Inc.
8. The licensee also submitted that it took two years after the launch of its services for the three largest vertically integrated broadcasting distribution undertakings (BDU) – Bell Canada, Rogers Communications Inc. and Shaw Cablesystems Limited – to carry the services, and that after ten years of operation, they are still not carried by Videotron Ltd., the fourth largest BDU in the country.
9. The licensee referred to substantial losses incurred in the early years of operation, submitting that it has taken much longer than expected for the services to break even and that large investments were required from shareholders.
10. The licensee added that the first two years of its current licence term saw some strong revenue growth, but that it has faced a slowdown in recent years as the services reach maturity in the continually shrinking BDU market. Further, content costs and other costs continue to increase despite declining revenue growth, and projected returns to shareholders are shrinking.

11. The licensee submitted that meeting the 10% CPE requirement is becoming increasingly challenging. It added that rapid market evolution means that there is no certainty as to the services' recent limited profitability.
12. In response to a Commission staff letter asking why excess CPE from the current licence term should be allowed to be carried over, which would be a departure from Commission practice, the licensee explained that unlike other licensees, the previous licence term for its services (i.e., the 2013-2014 through 2017-2018 broadcast years) represented the first time it was required to adhere to a CPE requirement. It was unclear what its programming needs would be, and it ended up exceeding the minimum CPE by a significant amount in an effort to ensure its compliance with the requirement. The licensee argued that this substantial investment and overachievement should not be erased following the first licence term in which it was required.
13. Commission staff also asked how the proposed condition could be effectively monitored and administered. The licensee replied that, "similarly to how any spending that is less or greater than the required amount in any year is carried forward and applied to the subsequent year or years, the same process would apply to any amounts carried over from the [previous] licence term."
14. Finally, when asked to provide wording for the proposed condition, the licensee provided the following:

Licensee may deduct from the minimum required expenditure in one or more of the years of the licence term the amount that the licensee spent in the previous licence term that exceeded its total minimum required expenditures on Canadian programming until it has used the entirety of the excess amount.
15. To enable broadcasters to better manage their CPE, particularly when production costs span more than one broadcast year, the Commission has traditionally allowed certain flexibilities. As an example, in Broadcasting Decision 2011-441, the Commission determined that all qualifying services would be permitted to count CPE under- or over-expenditures of up to 5% in any broadcast year of a licence term against CPE requirements in the subsequent broadcast year. Condition of licence 5 set out in the appendix to Broadcasting Decision 2018-312 sets out this flexibility for the Hollywood Suite services.
16. In Broadcasting Regulatory Policy 2012-596, the Commission revised its policy as it related to over-expenditures that may be deducted from the required expenditures on Canadian programming or programs of national interest in the next broadcast year by removing the 5% limitation on the carry-over of such over-expenditures and the obligation to use them in the subsequent broadcast year (the 5% limitation related to under-expenditures still applies). While first developed for large, group-based licensees, this same CPE spending flexibility was subsequently extended to smaller and independent broadcasters.

17. To date, while the Commission has allowed increased flexibility in the accounting of spending on Canadian programming, this flexibility has always been granted within the context of a specific licence term. This is to ensure a continued steady flow of money into the system and provide some measure of predictability for producers. It has required that broadcasters fully comply with their CPE conditions of service within that licence term. Accordingly, allowing the licensee to carry over any over CPE into the next licence term would represent a significant departure from the Commission's general policy and practice relating to CPE.
18. This general policy and practice have the following benefits:
- They make the amounts available for investments in Canadian programming in a given year (and year-to-year) more consistent. The more flexibility is given to broadcasters, the more likely there could be fluctuations between the amounts of investments on Canadian programming from one year to the next.
  - There is a stable and predictable source of funding for Canadian producers and creators.
19. The Commission considers that granting the licensee's request would be a significant departure from existing policy. If this practice were adopted more broadly by the broadcasting industry, there could be a negative effect on the creation of Canadian programming. In particular, the Commission is concerned about unintentionally creating an imbalance in the amount of investment in Canadian programming available from one period of time to another, which could lead to instability for Canadian producers and creators who count on funding indirectly subsidized by CPE contributions.
20. Finally, the Commission is concerned by the challenges that compliance monitoring would pose if the licensee's request were granted. The Commission's compliance monitoring practices are currently built around the paradigm of finite licence terms to which regulatory obligations are attached. Allowing the licensee's requested condition would complicate tracking of compliance with conditions of service related to CPE by broadcasters and the Commission.
21. Accordingly, the Commission finds the existing limits to CPE flexibility to be reasonable and does not consider that there is a sufficient basis to deviate from the current regulatory framework.

## **Conclusion**

22. In light of all the above, the Commission **renews** the broadcasting licences for the national, English-language discretionary services Hollywood Suite 70s Movies, Hollywood Suite 80s Movies, Hollywood Suite 90s Movies and Hollywood Suite 2000s Movies, from 1 September 2023 to 31 August 2028.

23. In addition, the Commission **denies** the licensee's request to carry over excess Canadian programming expenditures from the current licence term into the next licence term.
24. Pursuant to subsections 49(1) and 50(2) of the *Online Streaming Act*, the conditions of licence that existed prior to the date of royal assent of that Act are deemed to be conditions imposed under an order made pursuant to section 9.1 of the new *Broadcasting Act*, or subsection 11.1(2) in the case of expenditure requirements. As such, the conditions of licence for this licensee became conditions of service and continue to apply to the licensee. For ease of reference, the **conditions of service** for this licensee are set out in the appendix to this decision. Further, the formal broadcasting licence document issued to a licensee may set out additional requirements for the undertaking, relating to, for example, technical parameters or prohibitions on transfer. The licensee shall also adhere to any such requirements set out in the broadcasting licences for the undertakings.

### **Force and effect of broadcasting licences**

25. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licences renewed in this decision will cease to have any force or effect should the broadcasting certificates issued by the Department of Industry (also known as Innovation, Science and Economic Development Canada) lapse.

Secretary General

### **Related documents**

- *Hollywood Suite services – Licence renewals*, Broadcasting Decision CRTC 2018-312, 24 August 2018
- *Revised policy for large broadcast groups regarding Canadian programming expenditure over-expenditures for conventional television and specialty services*, Broadcasting Regulatory Policy CRTC 2012-596, 30 October 2012
- *Group-based licence renewals for English-language television groups – Introductory decision*; Broadcasting Decision CRTC 2011-441, 27 July 2011

*This decision is to be appended to each licence.*

## Appendix to Broadcasting Decision CRTC 2023-288

### Terms, conditions of service, expectations and encouragements for the national, English-language discretionary services Hollywood Suite 70s Movies, Hollywood Suite 80s Movies, Hollywood Suite 90s Movies and Hollywood Suite 2000s Movies

#### Terms

The licence will expire 31 August 2028.

#### Conditions of service

1. The licensee shall adhere to the conditions of service set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016. Further, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.
2. The licensee shall adhere to all applicable requirements set out in the *Discretionary Services Regulations* that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.<sup>1</sup>
3. The licensee shall, in each broadcast year, devote not less than 10% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming.
4. In the two years following the end of the previous licence term, the licensee shall report and respond to any Commission enquiries relating to the expenditures on Canadian programming made by the licensee for that term.
5. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming that occurred during the previous licence term.
6. Subject to condition 7, the licensee may claim, in addition to its expenditures on Canadian programming:
  - (a) a 50% credit against its Canadian programming expenditure requirement for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year; and

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<sup>1</sup> Pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*.

- (b) a 25% credit against its Canadian programming expenditure requirement for expenditures made on Canadian programming produced by an official language minority community producer and claimed as Canadian programming expenditures during that broadcast year. The licensee may claim the credit if
    - (i) the programming is produced in the province of Quebec and the original language of production is English; or
    - (ii) the programming is produced outside the province of Quebec and the original language of production is French.
7. The licensee may claim the credits calculated in accordance with condition 6 until the expenditures on Canadian programming produced by Indigenous producers and by official language minority community producers, including the credits, reach a combined maximum of 10% of the undertaking's Canadian programming expenditure requirement.
8. In regard to expenditures on Canadian programming:
- (a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programming that is up to 5% less than the minimum required expenditure for that year calculated in accordance with condition of service 3; 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.
  - (b) In each broadcast year of the licence term, excluding the final year, where the licensee expends an amount for that year on Canadian programming that is greater than the minimum required expenditure, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term.
  - (c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programming, at a minimum, the total of the minimum required expenditures calculated in accordance with condition of service 3.

## Definitions

For the purposes of these conditions of service:

**Indigenous producer** means an individual who self-identifies as Indigenous, which includes First Nations, Métis and Inuit, and is a Canadian citizen or resides in Canada, or an independent production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and are Canadian citizens or reside in Canada. In regard to the definition of “independent production

company,” “Canadian” includes a person who self-identifies as Indigenous and resides in Canada, whereas “Canadian company” includes a production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and reside in Canada.

**Official language minority community (OLMC) producer** means a company that meets the definition of “independent production company” and that, if operating in the province of Quebec, produces original English-language programming, or if operating outside of the province of Quebec, produces original French-language programming.

#### **Clarification for OLMC producer**

To be considered an OLMC producer in Canada, a production company must:

- (a) if it produces original programming in English, have its head office in Quebec and be owned and operated by a resident of Quebec;
- (b) if it produces original programming in French, have its head office outside Quebec and be owned and operated by a resident outside of Quebec.

#### **Expectations**

##### **Standard expectations**

The standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

##### **Cultural diversity**

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

#### **Encouragements**

##### **Standard encouragements**

The standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.