



Broadcasting Decision CRTC 2023-390

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Reference: Part 1 licence renewal application posted on 1 February 2023

Ottawa, 27 November 2023

Ontario French-language Educational Communications Authority
Province of Ontario

Public record: 2022-0816-5

TFO – Licence renewal

Summary

The Commission **renews** the broadcasting licence for the French-language satellite-to-cable educational television service TFO from 1 January 2024 to 31 August 2030.

In addition, the Commission **approves** the licensee's request to be subject to the standard requirements provided for discretionary services rather than those provided for television stations, as well as its request to amend those requirements in order to be subject to a requirement to broadcast four hours of described video programming per broadcast week.

Application

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. The Ontario French-language Educational Communications Authority (the Authority) filed an application to renew the broadcasting licence for the French-language satellite-to-cable educational television service TFO, which expires 31 December 2023.¹
3. The licensee stated that it wishes to adhere to Broadcasting Regulatory Policy 2016-436, but requested to be subject to the requirements for discretionary services (Appendix 2 of that Broadcasting Regulatory Policy) rather than those for television

¹ The original licence expiry date for the service was 31 August 2022. The licence was administratively renewed until 31 August 2023 as a result of Broadcasting Decision 2022-178, and until 31 December 2023 as a result of Broadcasting Decision 2023-299.

services.² In addition, the licensee requested an exception to condition of service 17,³ which relates to the provision of described video, and committed to adhere to its current obligation with respect to described video, as well as expectation 3 of Appendix 1 to Broadcasting Regulatory Policy 2016-436 relating to the provision of described video.

Interventions and reply

4. The Commission received numerous interventions in support of this application. These interventions were from the public, production companies and associations or organizations that support official language minority communities (OLMC). The Commission also received four interventions offering comments from the Alliance des producteurs francophones du Canada (APFC), the Canadian Media Guild (CMG) and two individuals.
5. The Authority replied to the APFC and the CMG.

Issues

6. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:
 - the licensee's apparent non-compliance with subsection 12(1) of the *Television Broadcasting Regulations, 1987* with respect to the filing of annual returns;
 - the need to impose new requirements for filing information;
 - the need to impose expenditure requirements relating to independent producers;
 - the licensee's request to be subject to the standard requirements for discretionary services rather than those for television stations; and
 - the licensee's request to replace standard condition 17 with its current condition.

Apparent non-compliance regarding the filling of annual returns

7. Paragraph 10(1)(i) of the old *Broadcasting Act*, which was in effect while the licensee's application was being considered, granted the Commission the authority, in

² The regulatory policy regarding standard requirements has been updated and, consequently, licensees that were previously subject to Appendix 2 of Broadcasting Regulatory Policy 2016-436 are now subject to Appendix 1 of Broadcasting Regulatory Policy 2023-306.

³ With the coming into force of the new *Broadcasting Act*, conditions of licence are now deemed to be conditions of service imposed by an order made pursuant to section 9.1 of the new *Broadcasting Act*.

furtherance of its objects, to make regulations requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify.

8. Pursuant to this authority, the Commission made subsection 12(1) of the *Television Broadcasting Regulations, 1987*, which requires licensees to file an annual return, including financial statements, by no later than 30 November of a given year for the broadcast year ending the previous 31 August.
9. 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, stipulates that any regulation made pursuant to paragraph 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*. Accordingly, section 12.1 of the *Television Broadcasting Regulations, 1987* is considered to be a condition of service pursuant to paragraph 9.1(1)(o) of the new *Broadcasting Act*, and licensees continue to be subject to this requirement.
10. According to Commission records, the annual returns filed for the following broadcast years did not include financial statements: 2015-2016, 2016-2017, 2017-2018, 2018-2019 and 2020-2021. In addition, Form REP-B (Reporting Entity Profile) was filed late for the 2017-2018 broadcast year.
11. The licensee confirmed the non-compliance. It explained that there had been staff changes and that the existing staff were unfamiliar with the procedure for filing financial information. As such, instead of attaching an electronic copy of the financial statements when filing Form REP-B, the licensee provided a web link to the statements. The Authority stated, however, that all of its financial statements are available to the public on its website.
12. Following a request for information from Commission staff, the licensee filed all of the missing financial statements on 22 November 2022.
13. The licensee quickly remedied the situation after being notified. Furthermore, it stated that it has reviewed its internal practices and put in place a framework to ensure that such an error does not happen again.
14. The Commission understands that this was a misunderstanding of regulatory requirements. Given that the relevant information was still public and that the licensee has rectified the situation and taken the necessary measures to ensure that this does not reoccur, the Commission considers the non-compliance to be minor.
15. In light of the above, the Commission finds the licensee in non-compliance with subsection 12(1) of the *Television Broadcasting Regulations, 1987*. However, the

Commission is satisfied with the justifications provided by the licensee and the measures taken to address the situation. It therefore considers that no further measures are warranted.

Filing of information

16. In its intervention, the APFC stated that the information provided by the Authority does not outline all of the specifics that are in the public interest.
17. Specifically, the APFC stated that there is no breakdown of expenditures and broadcast hours for TFO's in-house productions and independent productions. In addition, the original broadcast years of the independent productions identified in the co-production file are not specified. Only the pre-purchase year is currently indicated. The APFC added that financial information for each production is not available.
18. In its reply, the Authority strongly opposed the APFC's request concerning the filing of reports, stating that:
 - there is no particular advantage to providing this information when TFO is not, and should not be, subject to expenditure requirements relating to independent productions;
 - TFO is already monitored by its board of directors and provincial funding structure; and
 - the disclosure of this information would be detrimental to TFO and its independent production partners in a highly competitive broadcasting environment.
19. The Commission notes that the APFC has not explicitly requested that the Authority submit reports. It instead stated that the information submitted by the Authority did not provide details of independent productions broadcast by TFO. The Commission notes that, since 2020, large groups have been required to submit a production report annually, and that this obligation has been extended to services with mandatory distribution as part of the basic service [9.1(1)(h) status]. However, it is not the Commission's practice to impose such a report for educational services or television stations, as it constitutes an additional administrative burden and these services often have limited resources. Nevertheless, the Commission notes that the licensee must still indicate programs produced in-house or by independent producers in the program logs that it submits to the Commission. The Commission therefore has the necessary programming information to be able to respond in the event of a complaint. The information contained in the logs, including data on independent production, is accessible in its entirety and made available to the public on Open Data.
20. In light of the above, the Commission considers that it is not necessary to impose any new requirement on the filing of information on the Authority.

Expenditures related to independent producers

21. In its intervention, the APFC indicated that the Commission should impose an incremental expectation (from 15% to 25% of revenues) allocating a portion of TFO's expenditures to independent productions. It added that the Commission should impose an expectation that 80% of TFO's expenditures on independent producers be allocated to OLMC producers. Furthermore, the APFC stated that TFO should provide more information on independent production.
22. In its reply, the Authority explained that, as an educational service, TFO already has significant obligations and that the Commission does not impose any requirements relating to expenditures or independent production on educational services. It added that its revenues are mainly from the Government of Ontario and have remained fixed over the past years. Finally, the Authority stated that imposing expenditure requirements for independent production or for OLMCs would be counterproductive and would reduce the flexibility that it has and will need over the next few years in order to remain effective and relevant in a very difficult environment for French-language programming.
23. The Commission notes that the APFC compared TFO to TV5/UNIS TV. The Commission is of the view that this comparison is not relevant as the financial reality and status of the two services are different. TV5/UNIS TV is a discretionary service with mandatory distribution as part of the basic service with a fixed monthly wholesale rate. TV5/UNIS TV also broadcasts advertising, which provides additional revenue. Conversely, TFO is a provincial educational service. As such, TFO is only distributed as part of the basic service in the provinces of Ontario and Manitoba (where it is recognized as an educational service). It does not have a fixed monthly wholesale rate. Its revenues are mainly from subsidies from the Government of Ontario. Furthermore, the service does not receive any advertising revenues.
24. In addition, unlike TV5/UNIS TV, TFO produces part of its programming in-house. Such requirements would diminish the flexibility it has for creating its programming schedule. The Commission also notes that it is not the Commission's practice to impose expenditure requirements on provincial educational services.
25. In addition, the Commission notes that TFO already makes considerable use of independent producers: from 2017-2018 to 2021-2022, the service allocated an average of 34.4% of its Canadian programming expenditures to independent producers, of which over 42% went to independent OLMC producers.
26. In light of the above, the Commission considers that it is not necessary to impose expenditure requirements on TFO for independent producers and independent OLMC producers. Similarly, the licensee already submits program logs indicating which programs are produced in-house or by independent producers. As such, the Commission has relevant information on independent productions without increasing the administrative burden on the educational service.

Standard requirements

27. The licensee requested to be subject to the standard requirements for discretionary services rather than those for television stations, to which it is currently subject.
28. The licensee explained that a number of standard conditions of service for television stations no longer apply to TFO, since it does not operate over-the-air transmitters or offer local programming. The licensee added that in Broadcasting Decision 2018-318, the Commission imposed the standard requirements for discretionary services on the educational service Knowledge⁴ in British Columbia which, like TFO, does not operate over-the-air transmitters.
29. The Commission notes that TFO, like Knowledge, holds a licence for a satellite-to-cable programming undertaking. This type of undertaking cannot be defined entirely as a television station or a discretionary service. Television stations are subject to local programming requirements, while discretionary services are not. Given the distinction between the two services, the Commission considers that the licensee's arguments are justified, since TFO serves all of Ontario and Manitoba and its mandate as a provincial educational service is broader than that of a local service. Moreover, TFO does not broadcast any local programming.
30. As noted by the Authority, the Commission has imposed the standard requirements for discretionary services on the educational service Knowledge (Broadcasting Decision 2018-318). In that decision, the Commission determined that it would be appropriate to consider the satellite-to-cable educational service as a discretionary service for regulatory purposes. The Commission considers that TFO is more in line with a discretionary service, both in terms of its transmittal mode and its programming.
31. In light of the above, the Commission **approves** the licensee's request. The licensee shall now be subject to the regulatory framework for discretionary services, in particular to the standard requirements for this type of service, as well as to the *Discretionary Services Regulations*. Consequently, the Commission is removing condition 1 in the appendix to Broadcasting Decision 2015-406 relating to the standard requirements for television stations.
32. In addition, pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** the Ontario French-language Educational Communications Authority, by **condition of service**, to comply with the standard requirements set out in Appendix 1 to Broadcasting Regulatory Policy 2023-306, with the exception of condition of service 17 in regard to described video. The specifics of this condition of service are set out in the appendix to this decision.

⁴ Formerly known as Knowledge Network.

Described video

33. The applicant proposed to replace the above-mentioned standard condition of service 17 with its current condition of service with respect to described video (i.e., four hours per week). The applicant also proposed to add the expectation of Appendix 1 to Broadcasting Regulatory Policy 2016-436 that relates to the rebroadcasting of programming offered with described video.
34. As part of TFO's licence renewal application, the Authority stated its concerns on the imposition of a condition of service that would require the broadcast of programming with described during prime time (between 7:00 p.m. and 11:00 p.m.), seven days a week.
35. Specifically, the Authority argued that:
 - the "prime time" time slot for most commercial broadcasters should not apply to an educational programming service such as TFO, for which the primary target audience is children, since daytime time slots are when children are most likely to watch television (depending on the age group targeted);
 - in the evening, and especially after 9:00 p.m., the service offers Canadian programs as well as Canadian and non-Canadian feature films, which are rarely accompanied by described video. These feature films are a unique element of TFO's programming schedule and enhance the diversity of the content in the Canadian broadcasting system; and
 - adding described video to each of these feature films would result in an additional expenditure, which the Authority estimated at roughly one million dollars per year, and eliminating or decreasing its offering of feature films would reduce the diversity of content offered by the service and would be detrimental to the visibility of these feature films.
36. If the requirement relating to the broadcast of programming with described video during prime time is imposed upon it, the Authority will have to reduce TFO's other programming expenditures (including, for example, the addition of described video for content broadcast during the broadcast day that is intended for its target audience).
37. Rather, the Authority proposed that its current condition (four hours per broadcast week, of which two hours must be broadcast in described video for the first time on the service) be imposed again for the next licence term.
38. Currently, the service provides more than 20 hours of described video per broadcast week, including rebroadcasts. The applicant plans to maintain or increase this level over the next licence term. According to the licensee, this proposal adheres to the policy objective of offering more programs with described video from the main program categories (particularly programs for children), while reflecting TFO's particular situation.

39. In Broadcasting Regulatory Policy 2015-104, the Commission indicated that broadcasters who were subject to described video requirements, such as the Authority, would be required to, by September 2019, provide described video for programming broadcast between 7:00 p.m. and 11:00 p.m. (prime time), seven days a week. The Commission stated that the tiered approach to ramp up the amount of described video would be discussed at the licence renewal and be imposed on a case-by-case basis, depending on the size and resources of broadcasters.
40. TFO is a not-for-profit educational television service whose mandate is to promote French in Ontario and elsewhere through educational and cultural multimedia content and services. In addition, programming for children and youth occupies a special place in its programming schedule.
41. The Commission recognizes that the service's prime time hours do not correspond to the 7:00 p.m. to 11:00 p.m. time slot set out in condition 17. Thus, given the indicated costs associated with described video and that the Authority is a not-for-profit entity, the Commission considers reasonable the applicant's proposal to invest in the provision of described video programming to its target audience during their preferred viewing hours rather than in the evening.
42. In addition, the Commission notes the applicant stated that TFO offers more than 20 hours of described video per broadcast week and that it plans to maintain or increase this level over the next licence term, as well as its suggestion that an expectation in this regard be imposed on TFO (in addition to the above-noted condition).
43. Finally, the Commission notes that the applicant committed to adhere to the expectation set out in the standard requirements for television stations that programming already available with described video in the broadcasting system will be accompanied by described video when rebroadcast, even as it requested to be subject to the requirements for discretionary services, that do not contain this expectation.
44. The Commission considers that this expectation, combined with the proposed expectation that the service broadcast 20 hours of programming with described video per week, as well as the reimposition of the current condition of service, would enhance the service's described video offering. Furthermore, this would also advance the accessibility objectives set out in the Canadian broadcasting policy, while taking into account the size, resources and particularities of the service.
45. In light of the above, the Commission **approves** the licensee's request to modify the condition of service with respect to described video. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** the Ontario French-language Educational Communications Authority, by **condition of service**, to provide described video for a minimum of four hours per broadcast week, of which two hours must be broadcast in described video for the first time on TFO. The specifics of this condition of service are set out in the appendix to this decision.

Conclusion

46. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language satellite-to-cable educational television programming undertaking TFO from 1 January 2024 to 31 August 2030.
47. With respect to the conditions of service imposed at paragraphs 32 and 45, given that this renewal application was filed and processed prior to the coming into force of the new *Broadcasting Act*, and that interested parties had an opportunity to comment on the regulatory framework suitable for the licensee, described video, as well as the conditions of service amendments proposed by the licensee as part of that process, the Commission considers the Part 1 public proceeding sufficient to achieve the purposes of the publication and consultation requirement set out in subsection 9.1(4) of the new *Broadcasting Act*.
48. 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, except where modified by this decision.
49. In light of paragraphs 32 and 45 of this decision, the Commission has set out **conditions of service** for this licensee 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 licence for the undertaking.
50. The Commission notes the Authority's intention to propose to the provincial governments of all English-speaking provinces to make TFO the province's French-language educational television station. Such agreements could benefit OLMCs in these provinces.

Secretary General

Related documents

- *Standard conditions of service for licensed discretionary services, national news discretionary services and mainstream sports discretionary services and exemption order for exempt discretionary services – Modifications to the advertising time limit requirement*, Broadcasting Regulatory Policy CRTC 2023-306 and Broadcasting Order CRTC 2023-307, 5 September 2023
- *Various conventional and educational television programming undertakings, community programming services, discretionary services, on-demand services and terrestrial broadcasting distribution undertakings – Administrative renewals*, Broadcasting Decision CRTC 2023-299, 29 August 2023

- *Various independent television programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2022-178, 4 July 2022
- *Knowledge Network and BBC Kids – Licence renewals*, Broadcasting Decision CRTC 2018-318, 27 August 2018
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *TFO – Licence renewal*, Broadcasting Decision CRTC 2015-406, 28 August 2015
- *Let's Talk TV – Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-390

Terms, conditions of service, expectations and encouragements for the French-language satellite-to-cable educational television programming undertaking TFO

Terms

The licence will expire 31 August 2030.

Conditions of service

1. The licensee shall adhere to the standard requirements for discretionary services set out in Appendix 1 of *Standard conditions of service for licensed discretionary services, national news discretionary services and mainstream sports discretionary services and exemption order for exempt discretionary services – Modifications to the advertising time limit requirement*, Broadcasting Regulatory Policy CRTC 2023-306 and Broadcasting Order CRTC 2023-307, 5 September 2023, with the exception of condition of service 17. 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*.⁵
3. The licensee shall provide described video for a minimum of four hours per broadcast week, of which two hours must be broadcast in described video for the first time on the service. The minimum four hours of described video programming broadcast during each broadcast week may be drawn from the following program categories, set out in Item 6 of Schedule 1 to the *Discretionary Services Regulations*:
2(b) Long-form documentary, 7 Drama and comedy, 9 Variety, 11(a) General entertainment and human interest, and 11(b) Reality television, and/or may be programming targeting children.
4. The licensee shall devote to the broadcast of Canadian content at least 60% of its programming each broadcast day and at least 50% in each evening broadcast period.
5. The licensee shall file an annual report relating to the provision of closed captioning on non-linear platforms by 30 November of each year for the broadcast year ending the previous 31 August, in accordance with other requirements of the annual return.

⁵ 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*.

Definitions

For the purposes of these conditions of service, the terms “broadcast day” and “broadcast week” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*.

Expectations

Standard expectations

The standard expectations applicable to this licensee are set out in Appendix 1 to *Standard conditions of service for licensed discretionary services, national news discretionary services and mainstream sports discretionary services and exemption order for exempt discretionary services – Modifications to the advertising time limit requirement*, Broadcasting Regulatory Policy CRTC 2023-306 and Broadcasting Order CRTC 2023-307, 5 September 2023.

Expectation regarding programming

The Commission expects the licensee to devote at least 60% of its programming to the broadcast of programming for children and youth.

Expectation regarding closed captioning

The Commission expects the licensee to include closed captioning on programming made available on non-linear platforms when such programming includes closed captioning on traditional platforms.

Expectations regarding described video

The Commission expects TFO to offer a minimum of 20 hours of described video programming per broadcast week and that the number of hours of described video programming offered in a broadcast week increases progressively over the next licence term.

The Commission expects the licensee to acquire and make available the described version of programming such that all content that was offered with described video at some point in the broadcast system is offered with described video when it is rebroadcast.

Encouragements

Standard encouragements

The standard encouragements applicable to this licensee are set out in Appendix 1 to *Standard conditions of service for licensed discretionary services, national news discretionary services and mainstream sports discretionary services and exemption order for exempt discretionary services – Modifications to the advertising time limit requirement*, Broadcasting Regulatory Policy CRTC 2023-306 and Broadcasting Order CRTC 2023-307, 5 September 2023.

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity in its hiring practices and in all other aspects of its management of human resources.