



Broadcasting Decision CRTC 2023-394

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Reference: Part 1 licence renewal application posted on 20 March 2023

Ottawa, 30 November 2023

0859291 B.C. Ltd.
Victoria, British Columbia

Public record: 2022-0853-7

CHEK-DT Victoria – Licence renewal

Summary

The Commission **renews** the broadcasting licence for the English-language independent conventional commercial television station CHEK-DT Victoria, British Columbia, from 1 January 2024 to 31 August 2028.

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. 0859291 B.C. Ltd. filed an application to renew the broadcasting licence for the English-language independent conventional commercial television station CHEK-DT Victoria, British Columbia, which expires 31 December 2023.¹ The Commission did not receive any interventions regarding this application.

Apparent non-compliance

Annual returns

3. 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 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.

¹ The original licence expiry date for CHEK-DT was 31 August 2023. The licence for this station was administratively renewed until 31 December 2023 as a result of Broadcasting Decision 2023-299.

4. Pursuant to this authority, the Commission made subsection 12(1) of the *Television Broadcasting Regulations, 1987* (the Regulations), 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.
5. 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, subsection 12(1) of the Regulations 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.
6. According to Commission records, the licensee submitted an amendment to Form 1231 for the 2018-2019 broadcast year on 20 November 2020, almost a year after it was required to file financial information for that broadcast year. The licensee stated that while it had initially filed its annual return in time, it had to file an amendment after discovering it had under-reported its 2018-2019 locally reflective news programming expenditures. The licensee added that safeguards would be put in place to further review filings prior to submission in order to address similar situations.
7. In light of the above, the Commission finds the licensee in compliance with subsection 12(1) of the Regulations.

Described video

8. 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.
9. Paragraph 3(1)(p) of the *Broadcasting Act* declares that programming accessible by persons with disabilities should be provided within the Canadian broadcasting system.
10. Accordingly, and pursuant to subsection 9(1) and consistent with paragraph 3(1)(p), in Appendix 4 to Broadcasting Decision 2018-478, the Commission imposed the following condition of service on CHEK-DT:
 1. The licensee shall adhere to the conditions set out in the broadcasting licence for the undertaking, as well as to the conditions of licence set out in Appendix 1 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of condition 14, which is replaced by the following:
 14. The licensee shall, by 1 September 2019, provide described video for all English- and French-language programming that is

broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 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 is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).²

11. According to Commission records, the licensee provided described video for 91% of the programming that was broadcast on CHEK-DT during prime time in the 2019-2020 broadcast year and 92.4% of the programming broadcast during prime time in the 2020-2021 broadcast year, which included programs rebroadcast without described video. The programming broadcast without described video in the 2019-2020 and 2020-2021 broadcast years were not part of the exception granted in Broadcasting Decision 2020-393.
12. The licensee noted that it uses its own resources to create described video tracks for the programs it acquires. It stated that due to social distancing requirements during the COVID-19 pandemic, only one of the four master control team members were allowed in the technical area at a time to create the described video tracks and reformat each program. These employees were also required to take on additional responsibilities coordinating the daily provincial health bulletins. The licensee indicated that, to prevent future issues, it has redesigned the master control booth so that staff can be socially distanced.
13. The licensee explained that it had planned to create described video tracks for 35 non-exempt prime-time programs between 6 April and 18 August 2020, but did not manage to do so because of the COVID-19 pandemic. However, since that time, 33 of these programs have been broadcast with described video.
14. In light of the above, the Commission finds the licensee in non-compliance with the above-noted condition relating to described video for the 2019-2020 and 2020-2021 broadcasting years.
15. Notwithstanding the above, given that the scope of the non-compliance was limited, that the non-compliance itself was the product of the COVID-19 pandemic and its negative impact on the licensee's abilities to make use of the described video facilities it had in place, and that the licensee has already taken proactive corrective measures, the Commission finds that no further measures are warranted at this time, beyond an additional reporting requirement.
16. For the purposes of monitoring the broadcasting system and ensuring the achievement of policy objectives, including those relating to accessibility, the Commission has the

² In Broadcasting Decision 2020-393, the Commission approved an application by the licensee to amend standard condition of licence 14 to require CHEK-DT to provide described video for all English- and French-language programming that is broadcast during prime time with the exception of U.S. programming in the relevant programming categories received without described video less than 24 hours prior to air.

authority to impose monitoring and reporting requirements on licensees. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** 0859291 B.C. Ltd., by **condition of service**, to keep reports of all U.S. programs received without described video and broadcast during prime time, and to submit this report upon request. A template document reflecting the requirements of this report will be made available to the licensee. The specifics of this condition are set out in the appendix to this decision.

17. Under the new *Broadcasting Act*, the Commission has responsibilities to publish and consult on proposed orders. In this case, the renewal application was filed and the public proceeding held prior to the coming into force of the new *Broadcasting Act*, and interested parties had an opportunity to comment on the matters raised by the application as part of that process. Accordingly, in the circumstances, the Commission considers that these responsibilities are satisfied.

Conclusion

18. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language independent conventional commercial television programming undertaking CHEK-DT Victoria from 1 January 2024 to 31 August 2028.
19. 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.
20. For ease of reference and in light of paragraph 16 of this decision, the Commission has set out the **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.

Force and effect of broadcasting licences

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

Secretary General

Related documents

- *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

- *CHEK-DT Victoria – Licence amendment,* Broadcasting Decision CRTC 2020-393, 4 December 2020
- *Various independent conventional television programming undertakings – Licence renewals,* Broadcasting Decision CRTC 2018-478, 18 December 2018

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-394

Terms, conditions of service, expectations and encouragements for the English-language independent conventional commercial television programming undertaking CHEK-DT Victoria, British Columbia

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 1 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 Novembre 2016, with the exception of condition 14, which is replaced by the following:
 14. The licensee shall provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.) and that is drawn from program categories 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 is programming targeting preschool children (0-5 years of age) and children (6-12 years of age) with the exception of U.S. programming received without described video less than 24 hours prior to air. Such programs will be broadcast with described video for any repeat airings scheduled greater than 24 hours from delivery.

Furthermore, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.
2. The licensee shall keep reports (including the following: air date, start and end time, duration, program title, episode title/number, first airing, U.S. airdate, delivery date, repeat airing date, and details on whether or not the episode included described video) of all U.S. programs received without described video and broadcast in prime time, including U.S. programming received without described video prior to the 24 hours exemption threshold that the licensee is required to describe. This report must be submitted upon request.
3. The licensee shall adhere to all applicable requirements set out in the *Television Broadcasting Regulations, 1987*, that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.³

³ 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*.

4. In accordance with paragraph 90 of *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016, the television station is declared to be a “designated local television station.” The station will maintain this designation for the duration of the licence term as long as the television station remains in operation.
5. In accordance with *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016, the licensee shall devote, in each broadcast year, not less than 18% of the station’s previous broadcast year’s gross revenues to investments in locally reflective news or on acquisition thereof.
6. In each broadcast year of the licence term, excluding the final year,
 - a. the licensee may expend an amount on locally reflective news that is up to 5% less than the minimum required expenditure for that year;
 - b. where the licensee expends an amount for that year on locally reflective news that is greater than the minimum required, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term; and
 - c. the licensee shall ensure that the television station expends on locally reflective news the total of the minimum required expenditures calculated in accordance with condition 5.
7. The licensee shall broadcast at least 7 hours of locally reflective news each broadcast week.
8. The licensee shall, in each broadcast year, devote to the acquisition of or investment in Canadian programming a minimum of 30% of the previous broadcast year’s gross revenues of the undertaking.
9. Subject to condition 10, the licensee may claim, in addition to its expenditures on Canadian programming:
 - 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
 - b. 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; and

- ii. the programming is produced outside the province of Quebec and the original language of production is French.
10. The licensee may claim the credits calculated in accordance with condition 9 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 for the undertaking.
 11. In regard to Canadian programming expenditures:
 - 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 8; 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 8.

Definitions

For the purposes of these conditions of service:

The term "broadcast year" shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*.

"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.

"Local programming" means programming produced by either local stations with local personnel or locally based independent producers, that is of interest to the community or market served (i.e., locally relevant).

“Locally reflective news” means programming that meets the criteria set out in paragraphs 56 to 58 of *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016.

“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. 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; and
- 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 1 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 1 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 Novembre 2016.

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.