



## Broadcasting Decision CRTC 2023-396

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Reference: Part 1 licence renewal application posted on 16 February 2023

Ottawa, 30 November 2023

### **New Tang Dynasty Television (Canada)**

Across Canada

*Public record: 2021-0592-3*

## **New Tang Dynasty Television – Licence renewal**

### **Summary**

The Commission **renews** the broadcasting licence for the discretionary service New Tang Dynasty Television 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. New Tang Dynasty Television (Canada) filed an application to renew the broadcasting licence for the discretionary service New Tang Dynasty Television, which expires 31 December 2023.<sup>1</sup> The Commission did not receive any interventions in regard to this application.

### **Issues**

3. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must examine the following issues:
  - the licensee's apparent non-compliance with requirements relating to Canadian programming expenditures (CPE) for the 2018-2019 broadcast year;
  - the licensee's apparent non-compliance with the requirement relating to the closed captioning of English- and French-language programs, including

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<sup>1</sup> 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.

advertising material, broadcast during the broadcast day, for the 2018-2019 through 2020-2021 broadcast years; and

- the licensee's apparent non-compliance with the requirement to file reports outlining how it complied with closed captioning requirements, for the 2019-2020 broadcast year.

#### **Apparent non-compliance relating to 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 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 Decision 2018-327, the Commission imposed the following conditions of licence (now conditions of service)<sup>2</sup> on New Tang Dynasty Television:
  2. The licensee shall, in each broadcast year, devote not less than 45% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming.
  5. 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 licence 2; 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.

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<sup>2</sup> The licensee filed its application prior to the coming into force of the *Online Streaming Act*. Under that Act, what were formerly known as conditions of licence are now deemed to be conditions of service imposed under the new *Broadcasting Act*.

(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 licence 2.

7. Based on Commission records, the licensee expended an amount on Canadian programming that was 8.2% less than the minimum amount for the 2018-2019 broadcast year, thereby not making the minimum expenditure required by condition 2 and exceeding the 5% threshold for under-expenditures specified in condition 5.
8. The licensee confirmed that the shortfall calculated by the Commission was correct. However, the licensee also indicated that this instance of non-compliance resulted from production delays, which are the responsibility of the producer and are beyond the licensee's control. The licensee submitted that it spends more on CPE than any other Canadian broadcaster and that it would be unreasonable to penalize it for this shortfall, which the licensee stated was made up for in the following year. The licensee added that it overspent in all subsequent years.
9. While it is ultimately the licensee's responsibility to adhere to its regulatory requirements, the Commission is satisfied in this case that the shortfall was promptly made up and that the licensee's CPE contributions did indeed exceed the required minimum for all subsequent years.
10. In light of the above, the Commission finds the licensee in non-compliance with its requirements relating to CPE set out in conditions 2 and 5 in the appendix to Broadcasting Decision 2018-327, for the 2018-2019 broadcast year. However, given the licensee's explanation and its over-expenditures for subsequent years, the Commission considers that no further measures are required to ensure future compliance.

**Apparent non-compliance with the requirement relating to the closed captioning of English- and French-language programs**

11. Paragraph 3(1)(p) of the *Broadcasting Act* declares that programming accessible by persons with disabilities should be provided within the Canadian broadcasting system.
12. Pursuant to the authority granted by subsection 9(1) of the old *Broadcasting Act*, and consistent with paragraph 3(1)(p), in Appendix 2 to Broadcasting Regulatory

Policy 2016-436, the Commission imposed the following standard conditions on discretionary services, including New Tang Dynasty Television:<sup>3</sup>

11. The licensee shall caption 100% of the English- and French-language programs broadcast over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
12. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009:
  - a) for a service operating in its first licence term, the licensee shall ensure that advertising, sponsorship messages and promos in the English and French languages are closed captioned by no later than the fourth year of the licence term;
  - b) for a service operating in its second or subsequent licence term, the licensee shall ensure that advertising, sponsorship messages and promos in the English and French languages are closed captioned.
13. According to Commission records, 100% of the English- and French-language programs broadcast by the service were closed captioned during the 2018-2019 to 2020-2021 broadcast years. However, none of the English- and French-language advertising material that was broadcast was closed captioned.
14. When informed of this apparent non-compliance, the licensee submitted that it was, in fact, in compliance. The licensee filed amended logging reports to support this claim.
15. However, after examining the amended reports, the Commission confirmed that none of the aforementioned advertising material had been closed captioned.
16. In light of the above, the Commission finds the licensee in non-compliance with standard condition 12 set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436, for the 2018-2019 through 2020-2021 broadcast years.
17. In Broadcasting Decision 2018-327, the Commission found the licensee in non-compliance with the requirement to closed caption English- and French-language programs other than advertising material (at that time, the licensee was not yet required to caption advertising material).<sup>4</sup> As such, this is the second consecutive licence term in which the licensee has been found in non-compliance with

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<sup>3</sup> The requirement for the licensee of this service to adhere to the requirements set out in Broadcasting Regulatory Policy 2016-436 is set out in Broadcasting Decision 2018-327.

<sup>4</sup> See Broadcasting Regulatory Policies 2010-355 and 2016-436, which stipulate that, for a service operating in its first licence term, advertising, sponsorship messages and promos are to be closed captioned by no later than the fourth year of the licence term.

requirements related to closed captioning. The Commission considers that the licensee has improved its performance, as it only omitted to closed caption the English- and French-language advertising materials. However, given the recurrent nature of the licensee's non-compliance, the Commission considers that it would be appropriate to require the licensee to report annually on how it is complying with its closed captioning requirements. While, as discussed below, the licensee has not always complied with reporting requirements in the past, the Commission has tools to ensure compliance going forward, including the ability to impose conditions of service at any point during a licence term.

18. Accordingly, pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** New Tang Dynasty Television (Canada), as a **condition of service**, to file an annual report specifying how it has complied with its requirement to closed caption English- and French-language advertising material. The specifics of this condition are set out in the appendix to this decision.

#### **Apparent non-compliance with the requirement to file reports relating to closed captioning**

19. Pursuant to the authority granted by subsection 9(1) of the old *Broadcasting Act*, in the appendix to Broadcasting Decision 2018-327, the Commission imposed the following condition on New Tang Dynasty Television:
  8. The licensee shall, by each of 30 November 2019 and 30 November 2020, provide a report to the Commission indicating how it complied with its condition of licence relating to closed captioning in the 2018-2019 and 2019-2020 broadcast years, respectively. The condition of licence for closed captioning is set out as condition of licence 11 in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.
20. According to Commission records, the licensee had not filed either report by the time this proceeding began. When informed of this apparent non-compliance and asked to file the missing reports, the licensee, despite indicating that it would file both missing reports, filed a report only for the 2018-2019 broadcast year. It did not file a report for the 2019-2020 broadcast year.
21. In light of the above, the Commission finds the licensee in non-compliance with condition 8 set out in the appendix to Broadcasting Decision 2018-327, for the 2019-2020 broadcast year.
22. As noted in paragraph 17 above, this is the second consecutive licence term in which the licensee has been found in non-compliance with requirements related to closed

captioning. Indeed, the above-mentioned reporting requirement was imposed due to the licensee's non-compliance during the preceding licence term.<sup>5</sup>

23. Although the licensee filed one of its two missing reports, the Commission considers it appropriate to require the licensee to also file the second missing report. Further, the Commission considers it appropriate to require the licensee to continue to report on its compliance with the requirement to closed caption English- and French-language programs for each year of the new licence term.
24. Accordingly, pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** New Tang Dynasty Television (Canada), as a **condition of service**, to file the report for the 2019-2020 broadcast year required by condition 8 set out in the appendix to Broadcasting Decision 2018-327 by no later than **17 January 2024**.
25. Further, the Commission **orders** New Tang Dynasty Television (Canada), as a **condition of service**, to provide, by **30 November** each year, for the broadcast year ending the previous 31 August, a report to the Commission outlining how it complied, during that broadcast year, with its requirement to closed caption English- and French-language programs broadcast over the broadcast day. The specifics of these conditions are set out in the appendix to this decision.

## Conclusion

26. In light of all of the above, the Commission **renews** the broadcasting licence for the discretionary service New Tang Dynasty Television from 1 January 2024 to 31 August 2028.
27. With respect to the conditions of service imposed in this decision, given that this renewal application was filed and published prior to the coming into force of the new *Broadcasting Act*, and that interested parties had an opportunity to comment on the compliance issues as part of that process, including CPE and closed captioning, the Commission considers the public Part 1 proceeding sufficient to achieve the purposes of the publication and consultation requirement set out in subsection 9.1(4) of the new *Broadcasting Act* in this case.
28. 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.
29. For ease of reference and, in light of paragraphs 18, 24 and 25 of this decision, the Commission has set out the **conditions of service** for this licensee in the appendix to

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<sup>5</sup> See paragraphs 16-17 in Broadcasting Decision 2018-327.

this decision.<sup>6</sup> 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.

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
- *NTD Television – Licence renewal*, Broadcasting Decision CRTC 2018-327, 29 August 2018
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Implementation of the Accessibility Policy with respect to new Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007

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

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<sup>6</sup> The standard conditions of service to which discretionary services such as New Tang Dynasty Television are subject were formerly set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436. These were updated and are now set out in Appendix 1 to Broadcasting Regulatory Policy 2023-306.

## Appendix to Broadcasting Decision CRTC 2023-396

### Terms, conditions of service, expectations and encouragements for the discretionary service New Tang Dynasty Television

#### 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 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. 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>7</sup>
3. The licensee shall, in each broadcast year, devote not less than 45% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming.
4. Subject to condition 5, 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
  - (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

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<sup>7</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*.



- ii. the programming is produced outside the province of Quebec and the original language of production is French.
5. The licensee may claim the credits calculated in accordance with condition 4 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.
6. 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 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 3.
7. In the two years following the end of the previous licence term, the licensee shall report and respond to any Commission inquiries relating to the expenditures on Canadian programming made by the licensee for that term.
8. 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.
9. The licensee shall, by **30 November** for each broadcast year of the licence term, provide a report to the Commission indicating how it complied with the following conditions relating to closed captioning for the broadcast year ending the previous 31 August:
  - a) the condition set out as condition 11 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; and

b) the condition set out as condition 12 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.

10. The licensee shall, by **17 January 2024**, file the report for the 2019-2020 broadcast year required by condition 8 in the appendix to *NTD Television – Licence renewal*, Broadcasting Decision CRTC 2018-327, 29 August 2018.

## Definitions

For the purposes of these conditions of service:

The term “broadcast year” shall have the same meaning as that set out in the *Discretionary Services Regulations*.

**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.

**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 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.

**Cultural diversity**

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

**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.