



## Broadcasting Decision CRTC 2006-381

Ottawa, 18 August 2006

**YTV Canada Inc.**  
Across Canada

*Application 2005-1516-6  
Public Hearing in the National Capital Region  
1 May 2006*

### **YTV – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the specialty programming undertaking known as YTV from 1 September 2006 to 31 August 2013. The details regarding the licensee's specific proposals for the new licence term, and the conditions of licence and other obligations determined by the Commission are set out below.*

### **The application**

1. The Commission received an application by YTV Canada Inc. to renew the broadcasting licence, which expires 31 August 2006, for the national, English-language specialty programming undertaking known as YTV.
2. On the basis of its review of this licence renewal application and having considered the interventions received, the Commission **renews** the broadcasting licence for YTV from 1 September 2006 to 31 August 2013. The licence will be subject to the **conditions** specified therein and to the **conditions** set out in the appendix to this decision.
3. As part of its licence renewal application, the licensee requested that the Commission amend the condition of licence that identifies the three target audiences that YTV is licensed to serve and the proportion of its programming schedule that is to be directed to each. The licensee also proposed various other licence amendments involving the deletion of existing conditions of licence establishing:
  - scheduling requirements for drama programming having a child or a youth as a major protagonist; the scheduling of programming of particular interest to youth;
  - the maximum number of hours per week of drama programming that may be produced in any one country other than Canada (excluding feature films and specials) that may be aired during the evening broadcast period;

- the minimum percentage of YTV's non-Canadian programming that may be devoted to programs from non-North American sources; and
  - the maximum number of feature films that may be aired during the evening broadcast period over any seven-day period of Sunday to Saturday.
4. The Commission received many interventions supporting this application. A number of the interventions were filed by parties who were concerned by one or more of the proposed amendments to YTV's conditions of licence. Two further matters raised by the licensee and various interveners were YTV's expenditures on Canadian programming and the licensee's support of independent Canadian producers.
  5. Given the large number of licence amendments proposed by YTV in its licence renewal application, the Commission decided that they would be best assessed in the context of an examination of their potential implications for the service as a whole and its ability to fulfil its mandate. Specifically, rather than analyze and reach a determination with respect to each request in isolation, the Commission has assessed the potential cumulative impact of the proposed amendments on the ability of YTV to continue to fulfil its core mandate as a specialty service whose programming is targeted to children, youth and their families. The Commission is satisfied that such an approach has enabled it to balance the need perceived by the licensee for additional flexibility against the need to preserve the integrity of the Commission's licensing framework for specialty services.

## **Proposed licence amendments**

### **Modifications to the specific audiences that YTV's programming must target**

6. YTV's current condition of licence 1 reads as follows:

In each broadcast year, a minimum of 30% of the programming distributed on YTV shall have as its target audience children up to 5 years of age, a minimum of 48% shall have as its target audience children and youth 6 to 17 years of age, and a maximum of 22% shall have as its target audience families.
7. The licensee requested that the Commission amend condition of licence 1 to read as follows :
  1. (a) YTV is a national, English-language specialty programming undertaking with programs targeted to children, youth and their families.
  - (b) In each broadcast year, a minimum of 70% of the programming distributed on YTV shall have as its target audience children and youth up to 17 years of age and a maximum of 30% shall have as its target audience youth and their families.

8. The licensee submitted that the proposed amendment would provide the flexibility it requires to increase the appeal of the YTV service among those of its target audience who are turning increasingly to other sources, particularly “on-demand” services, for programming. The licensee indicated, however, that YTV would continue to offer a commercial-free block of programming targeted to young children, except during holiday periods when older children are home from school.
9. During the deficiency process, the Commission asked the licensee if it would be willing to schedule the commercial-free block of programming, as described above, as a condition of licence. The Commission also asked the licensee how it proposed to differentiate YTV from the Category 1 specialty programming undertaking known as Razer, a service operated by CHUM Limited (CHUM). Razer offers programming targeted primarily to teens aged 12 to 17 years as well as to young persons between the ages of 18 and 24 years.<sup>1</sup>
10. In response, the licensee argued that a condition of licence requiring it to retain a commercial-free block of programming targeted to young children would not be appropriate, as it would prevent YTV from scheduling programs at times when its audience prefers to watch them. The licensee reiterated that it cannot ignore the reality that its target audience is increasingly using “on-demand” technology. According to the licensee, the proposed amendment would not alter YTV’s nature of service. It stated that it will continue to focus on drama for children, youth and families in order to differentiate YTV from Razer, whose service the licensee described as focusing on general interest and “edgy” programs for teens. It also submitted that a second specialty programming undertaking that YTV operates, Treehouse TV (Treehouse), provides a service that is devoted to programming for children up to six years of age and provides a non-commercial outlet for young people to watch high-quality programming.

#### *Interventions*

11. The Canadian Film and Television Production Association (CFTPA) and the Association des producteurs de films et de television du Québec (APFTQ) supported the proposed amendment, provided that the licensee accepted a condition of licence requiring that YTV continue to broadcast a block of commercial-free programming targeted to a preschool audience. The APFTQ expressed concern that, without such a condition, the licensee might decide to schedule all programming targeted to preschoolers on Treehouse and none on YTV.

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<sup>1</sup> In *Connect – a new specialty channel*, Decision CRTC 2000-462, 14 December 2000, the Commission approved an application by Craig Broadcast Systems Inc. (Craig), on behalf of a company to be incorporated for a new Category 1 specialty service. The service, initially called Connect, was rebranded by Craig as MTV Canada. In *Transfer of effective control of Craig Media Inc. to CHUM Limited; and Acquisition of assets – reorganization of Toronto One*, Broadcasting Decision CRTC 2004-502, 19 November 2004, the Commission approved an application by CHUM Limited (CHUM) for authority to acquire effective control of Craig, including MTV Canada. Under CHUM’s ownership, MTV Canada was rebranded as Razer.

12. CHUM opposed the proposed amendment. CHUM claimed that the licensee did not provide sufficient evidence to demonstrate why the proposed amendment to condition of licence 1 was necessary. In CHUM's view, approval of the proposed amendment would fundamentally alter YTV's nature of service and permit it to focus on an older youth audience, thus bringing it into direct competition with Razer. CHUM further contended that Treehouse was licensed to complement, and not replace, YTV's service.
13. The Family Channel Inc., licensee of the pay television programming service known as The Family Channel, opposed the proposed amendment to condition of licence 1, and all of the other proposed amendments, on the grounds that their cumulative effect would transform YTV's niche specialty service into a general interest service, one that would compete with The Family Channel.

*Licensee's reply*

14. In response to the CFTPA and the APFTQ, the licensee submitted that YTV's current condition of licence 4, which requires that any programming targeted to children up to five years of age be commercial-free, eliminates any need for a condition of licence such as that proposed by the interveners.
15. In response to CHUM, the licensee submitted that the focus of YTV's service is primarily on drama programs for children, youth and their families, and is very different from the focus of Razer's general interest program service for teens. The licensee also noted that, unlike YTV, Razer has a very well defined nature of service that requires its programming to focus on topics such as health, sex, relationships, careers, news, music, fashion and trends.

**Deletion of requirements for the scheduling of drama programming having a child or a youth as a major protagonist**

16. The licensee requested that the Commission delete YTV's current condition of licence 2, which reads as follows:

The licensee shall devote 100% of the programs in the drama category distributed in the period between 6 p.m. and 9 p.m. in the evening broadcast period to programs with a major protagonist who is a child, youth under the age of 18 years, puppet, animated character, creature of the animal kingdom, comic book character, folk and/or super hero or classical or historical hero.

17. In support of its request, the licensee submitted that condition of licence 2 was imposed as protection for conventional television networks. The licensee contended that there may be circumstances where the major protagonist in a program, although an adult, has a strong appeal to both teen and child audiences. According to the licensee, imposing limits on the nature of a protagonist "flies in the face of the competitive environment and the interests of our audience."

*Interventions*

18. Alliance Atlantis Communications Inc. (Alliance Atlantis) opposed the complete removal of the protagonist requirements. It stated that this would fundamentally alter the service and permit YTV to become an unrestricted drama service that would compete for program rights with drama services such as Showcase Television, as well as compete with such services for the adult audience during prime time viewing periods.
19. Alliance Atlantis proposed that condition of licence 2 be replaced by the following condition of licence:

The licensee shall devote 100% of the programs in the drama category broadcast in the evening period (6 p.m. to midnight) to programs with a major protagonist who is a child or youth.
20. According to Alliance Atlantis, this would require the service to maintain its core programming focus in the drama category, while permitting the licensee greater flexibility to respond to the increasingly competitive broadcasting environment.
21. The CFTPA recommended that, instead of deleting condition of licence 2, consideration be given to developing a definition of protagonist that would be more encompassing than the one currently set out in that condition of licence.
22. CHUM was of the view that deletion of condition of licence 2 would directly affect the target audience of YTV. It stated that the removal of the protagonist requirements, in conjunction with other of the amendments proposed by the licensee, would leave YTV free to direct up to 70% of its programming to youth 16 and 17 years of age.
23. CHUM argued that the protagonist requirements help ensure that YTV's programming is actually targeted to young Canadians. CHUM also noted that, until YTV's last licence renewal, the protagonist requirements applied to all drama programming broadcast between 6 p.m. and midnight. In CHUM's view, part of the rationale for having the protagonist requirements removed for drama programming aired during the 9 p.m. to midnight block was a commitment made by YTV at the time to reserve the 6 p.m. to 9 p.m. block for young Canadians. CHUM also argued that many of the examples cited by YTV of programming that it would broadcast once the protagonist requirements were removed would actually fit under the current definition. Thus, in CHUM's view, the protagonist requirements should remain in place.

*Licensee's reply*

24. In YTV's reply to Alliance Atlantis, the licensee noted that its proposed amendment to condition of licence 1 would effectively prevent YTV from acquiring and scheduling drama programs targeted solely to an adult audience. YTV added that the type of programming broadcast on Showcase would be inappropriate for children and youth, and that any prediction that the deletion of condition of licence 2 and its other proposed amendments would bring YTV into competition with Showcase was "farfetched." The

licensee recognized that removal of the protagonist requirements of condition of licence 2 would allow it the flexibility to schedule a wider variety of drama programs. YTV emphasized, however, that it would also be subject to the requirements regarding the target audiences for its programming under the proposed amendments to condition of licence 1.

25. YTV stated that the restrictions of the condition of licence proposed by Alliance Atlantis are greater than those contained in the existing condition of licence 2, as they would prohibit YTV from broadcasting child-targeted animated drama series, such as *Yvon of the Yukon*. YTV indicated that its purpose in requesting that condition of licence 2 be deleted is to allow YTV to introduce to its schedule programming having older protagonists, or such protagonists as space aliens or robots, that might not be captured by the existing protagonist requirements, but that would nonetheless appeal to youth. YTV reiterated that its proposed amendment would offer more creative freedom to producers, without altering the audience to which its programming is targeted.
26. In its reply to CHUM, YTV stated that the intervener's concern for the potential consequences of allowing YTV to direct 70% of its programming to youth 16 and 17 years old is unfounded, as YTV has been branded as a "family-friendly" network and would remain so. YTV indicated that it is not prepared to jeopardize the "family-friendly" relationship that it has with its audience, especially in a competitive landscape.
27. YTV stated that it was satisfied its reasons for requesting the removal of condition of licence 2 were sound. Nevertheless, given the concerns expressed by interveners regarding that request, YTV proposed that condition of licence 2 instead be amended to require that all drama programming aired during the evening broadcast period "be of particular interest to children, youth and their families through the use of a protagonist that is developed with children, youth or families in mind, such as but not limited to: animated character, super hero, animal, child or youth."
28. YTV stated that such a condition of licence, combined with the other licence amendments it had proposed, would give it flexibility to schedule programs having protagonists that are not captured by the existing condition of licence 2, while ensuring that the service remains focused principally on youth and that YTV does not become a service targeted to adults.

**Deletion of requirements for the scheduling of programming of particular interest to youth and families**

29. The licensee requested that the Commission delete YTV's current condition of licence 3, which reads as follows:

The licensee shall provide programming of particular interest to youth (age 12-17) and their families during the period from 9 p.m. to midnight.

30. In its renewal application, YTV argued that the emergence of video-on-demand (VOD) and subscription video on demand (SVOD) services, and the use of personal video recorders (PVRs) in the home, have reduced the relevance and importance of the scheduling requirements of condition of licence 3. The licensee indicated that it remains of key importance that YTV continue to reflect its “brand promise” throughout the program schedule.

*Intervention*

31. In its intervention, CFTPA argued that condition of licence 3 should be retained as it would ensure that YTV continues to serve older youth and families. In CFTPA’s view, it would be inappropriate for YTV to use the period from 9 p.m. to midnight to repeat programs aired earlier in the day and intended for much younger viewers.

*Licensee’s reply*

32. In its reply, YTV reiterated that part of its strategy going forward was to develop more programs that grow with its audience. YTV stated that it has no intention of neglecting the older spectrum of its audience, but emphasized that the increasing use by television viewers of such time-shifting tools as PVRs and of non-traditional broadcasting platforms such as VOD and SVOD, have reduced the relevance of condition of licence 3.

**Deletion of the maximum limit on the use during the evening broadcast period of drama programming produced in any one country other than Canada; and of the minimum annual limit of non-Canadian programming that may be devoted to programs from non-North American sources**

33. The licensee requested that the Commission delete YTV’s current conditions of licence 6 and 10, which read as follows:

(6) The licensee shall devote no more than an average of one hour per evening broadcast period over each broadcast week to drama programs produced in any one country other than Canada, excluding feature films and specials.

(10) In each broadcast year, the licensee shall devote a minimum of 35% of its non-Canadian programming to programs from non-North American sources.

34. The licensee submitted that these conditions of licence are no longer appropriate, as Canadians are now able to receive ample programming from around the world. In addition, YTV stated that it was unfair to place restrictions on its ability to acquire and schedule programming from any particular source when BBC Kids and non-Canadian programming services of that type have no such restrictions. With respect to condition of licence 6, YTV added that this condition of licence was originally established in response to the concerns of conventional broadcast networks who saw YTV as a competitor.

### *Interventions*

35. In its intervention, CHUM noted that these conditions of licence limit the amount of programming that YTV can acquire from the U.S. market, thereby ensuring that young Canadians are exposed to quality programming from around the world. According to CHUM, if the Commission allowed YTV to increase its use of U.S. programming, this would greatly increase competition for programming rights among Canadian television services (both conventional and specialty), result in increased costs, and potentially diminish the quality of the services that are available. CHUM added that approval of these, along with approval of all of the other amendments proposed by YTV, would enable YTV to pursue the rights to a broader range of programming.
36. The APFTQ also opposed the removal of conditions of licence 6 and 10, stating that this would allow YTV to compete with conventional television services. The APFTQ noted that, when YTV obtained its initial licence, it committed to contribute to programming diversity and to [TRANSLATION] “open a wider window on the world and expose our children to the best programming that the world has to offer.” The APFTQ added that there are several existing partnerships devoted to the creation of children’s programming that exist between independent Canadian producers and those in countries other than the U.S., and that approval of the proposed amendments would put these partnerships at risk.
37. In its opposing intervention, CanWest MediaWorks Inc. (CanWest) stated the requirements specified in condition of licence 6 regarding the source of non-Canadian drama programming aired during the evening broadcast period serves as a meaningful differentiator between conventional and specialty television services. CanWest expressed concern that removal of condition of licence 6 would enable YTV to acquire all of its non-Canadian prime time drama programming from the U.S., noting that U.S. drama programming aired in the evening broadcast period is the principal source of simulcast revenue earned by conventional broadcasters during that period. Moreover, CanWest stated that, with the removal of condition of licence 6, YTV would be well positioned to compete with conventional television stations for programming rights and audience in the evening broadcast period.
38. The CFTPA noted in its intervention that YTV is required to devote a minimum of 60% of all programming aired during the evening broadcast period to Canadian content. The CFTPA added that, while this ensures that much of the program schedule after 9 p.m. is Canadian, the application provided few details on the licensee’s plans or intentions in this regard.
39. Alliance Atlantis supported the removal of conditions of licence 6 and 10 on the grounds that they are no longer relevant and do not reflect the reality of the competitive marketplace. It added that U.S. programming that is offered in the Canadian market is increasingly supplemented by programming produced in other countries and made available to Canadians through new media platforms. According to the intervener, if YTV and other specialty services are to present the best programming and stave off the rigorous competition they face from U.S. services available in Canada, it is important that they be able to access the very best programming in their respective genres. Alliance

Atlantis also indicated that the elimination of these conditions of licence would assist YTV in accessing more youth-oriented programming, which would help it to remain focused on fulfilling its core mandate.

*Licensee's replies*

40. In its reply, the licensee reiterated that it has always operated within the boundaries of its unique nature of service by providing its target audiences with high quality programming from Canada, as well as from other countries, and that a program's country of origin should not arise as an issue so long as all conditions of licence are respected, in particular the condition of licence requiring YTV to devote 60% of the evening broadcast period to Canadian programming. YTV noted that this particular condition of licence ensures that almost four of the six hours of programming during the evening broadcast period are to be allocated to Canadian programming, leaving less than 2 hours 30 minutes per evening for programming that may be obtained from non-Canadian sources. YTV argued that the interveners have not shown how removal of conditions of licence 6 and 10 would negatively impact either the broadcasting industry or the broader public interest.
41. With respect to CanWest's intervention, YTV disagreed that the source of non-Canadian drama programming continues to be a differentiator between a specialty service and a conventional television network when, in fact, it is YTV's nature of service requirements that primarily operate to distinguish the service from those of conventional television broadcasters. YTV also disagreed with CanWest's statement that removal of conditions of licence 6 and 10 would lead to increased competition for program rights. The licensee indicated that such increased competition would not occur because YTV does not air the same types of programming that conventional broadcasters air during the evening broadcast period, nor does it compete with them for U.S. network prime time drama.
42. With respect to the CFTPA's concerns, YTV clarified that its objective is to pursue its existing strategy to schedule popular non-Canadian programs as lead-ins to its Canadian original series programming. YTV submitted that the flexibility to fill the non-Canadian portion of its prime time programming schedule with programming from any country, regardless of genre, is critical to the success of this strategy. YTV further noted that there would be no overall increase in non-Canadian programming in its schedule.

**Deletion of the requirement specifying the maximum number of feature films that may be aired during the evening broadcast period over any seven-day period of Sunday to Saturday.**

43. YTV's current condition of licence 7 reads as follows:

7 (1) The licensee shall devote no more than 10% of the broadcast year to feature films.

(2) In any seven-day period of Sunday to Saturday, in the evening broadcast period, the licensee shall distribute no more than two feature films.

44. In its application, YTV requested that its licence be amended by the removal of condition of licence 7(2). YTV indicated that it was merely seeking flexibility with respect to the scheduling of feature films. YTV stated that this condition of licence was originally designed to protect conventional broadcasters. According to the licensee, while the reality is that dozens of other services schedule feature films, conventional broadcasters either no longer do so, or place far fewer feature films in their schedules than they used to.

*Interventions*

45. In its intervention, CHUM opposed the removal of this condition of licence on the grounds that YTV's explanation was inaccurate and inadequate. CHUM stated that it is one of Canada's largest exhibitors and supporters of feature film and high-end series drama. CHUM gave the example of its Toronto television station CITY-TV, an over-the-air station that broadcasts numerous feature films in prime time every week. CHUM indicated that removal of condition of licence 7(2) would enable YTV to air six, two-hour films in prime time every week and that this ability, combined with approval of the licensee's proposed removal of conditions of licence 6 and 10, would result in greater competition for foreign feature films, rising costs and the departure of more money from the Canadian broadcasting system. CHUM further noted that YTV and Movie Central are both owned by Corus Entertainment Inc. (Corus). The intervener claimed that this would permit Corus to acquire both first and second window rights to most feature films, to the detriment of CHUM's conventional television operations.
46. CanWest also opposed the removal of condition of licence 7(2). Like CHUM, CanWest submitted that YTV's rationale was flawed, since feature films are an essential element of many conventional broadcast schedules. CanWest stated that acquiring the rights to feature films is a competitive and expensive process for conventional broadcasters and is becoming even more challenging as specialty services increasingly compete to acquire this type of programming. CanWest added that YTV already has sufficient flexibility to offer its target audience appropriate feature films. It noted in this regard that YTV has the ability to devote up to 10% of its programming schedule to feature films, including two feature films per week during the evening broadcast period. In CanWest's opinion, the scheduling restriction contained in condition of licence 7(2) is essential, as it ensures greater access to appropriate feature films by children and youth at times when they are awake. CanWest indicated that, in its view, YTV appears to be attempting to shift the focus of its feature film programming to older audiences and away from its younger viewers.
47. In its intervention, the CFTPA expressed concern that YTV's licence renewal application contained insufficient rationale for the removal of this condition of licence and that YTV did not make any commitments to invest in or exhibit appropriate Canadian features.
48. The APFTQ did not oppose the proposed deletion of condition of licence 7(2). Rather, it proposed that the condition be amended so as to [TRANSLATION] "permit YTV to broadcast more than two feature films in any seven-day period of Sunday to Saturday, in the evening broadcast period, provided that the additional feature films are Canadian."

*Licensee's replies*

49. In its reply to interventions, YTV stated that relief from condition of licence 7 would enable it to make the best use of its program inventory, including the ability to do back-to-back scheduling of movies as part of special events on specific programming themes or on holidays, and thereby attract larger audiences to the service.
50. In responding to CHUM's concerns, YTV indicated that the deletion of condition of licence 7(2) would not result in greater competition for foreign films, rising costs, or an increase in the flow of money out of the Canadian broadcasting system to U.S. rights holders. YTV reiterated that it was not asking to increase the amount of feature films it may broadcast, but only for flexibility in how it may schedule these feature films. In addition, YTV stated that, from a financial and strategic point of view, it does not have the ability to compete with conventional television stations for the rights to feature film packages. It noted in this regard that the majority of movies that conventional television networks exhibit are not appropriate for YTV, given its nature of service.
51. With respect to CanWest's concerns that YTV would shift the focus of its feature films to an older youth audience and away from its younger audience, YTV noted that the evening broadcast period is from 6 p.m. to midnight and that viewers of all ages, including younger viewers, watch YTV during those hours.
52. In its reply to the CFTPA's intervention, YTV indicated that its conditions of licence regarding exhibition and expenditures on Canadian programming do not require it to make a specific commitment to program genres. YTV reiterated that its purpose in seeking the removal of condition of licence 7(2) is to acquire scheduling flexibility and not to increase the overall exhibition of feature films.
53. In response to the APFTQ's suggestion that condition of licence 7(2) be amended rather than deleted, YTV repeated that its obligation to provide a minimum of 60% Canadian content during the evening broadcast period means that only 2 hours 30 minutes of programming in that period may be non-Canadian. YTV indicated that, because it relies upon a regular schedule of programming for children and youth, it is unreasonable to suggest that YTV might become a movie-based service on the basis of the deletion of condition of licence 7(2). YTV reiterated that, while its program schedule would continue to rely on use of television series, the removal of this condition would give it the ability to better serve its audience through the scheduling of back-to-back movies as part of special events.

## Canadian programming expenditures

54. YTV acknowledged that, in accordance with the Commission's current approach, the Commission may be inclined to increase YTV's Canadian programming expenditure (CPE) requirements from the current level of 35% of the licensee's previous year's gross revenues. YTV submitted, however, that it might prove counter productive for the Commission to do so. YTV explained that it expects its revenue to fall over the next licence term due to increased competition, a drop in target audience size and pressure on the industry to lower subscriber fees. It also submitted that the Commission's current approach acts as a form of rate of return regulation and punishes specialty services for their success.
55. YTV stated that, provided the Commission maintains YTV's current annual CPE requirement at the rate of 35% of the previous year's gross revenues, the licensee would commit to spend at least \$222 million on Canadian programming over the next licence term, even if it encounters a revenue shortfall. YTV stated that it would further commit to allocate at least a third of all CPE to the development, production and licensing of original, first-run Canadian programs. In addition, YTV would establish a New Media Technology Fund, with a \$5 million budget for the next licence term, to help independent producers develop and create new media platforms for the programs that are licensed by YTV.

## Interventions

56. In their interventions, the APFTQ and the CFTPA submitted that the Commission should increase YTV's level of Canadian programming expenditures requirements to 40% in accordance with the approach outlined in *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004 (Public Notice 2004-2).
57. The Directors' Guild of Canada, the Writers' Guild of Canada and the Alliance of Canadian Cinema, Television and Radio Artists (collectively, the Unions) also submitted that the Commission should set YTV's level of Canadian programming expenditures in accordance with the approach set out in Public Notice 2004-2, and that the level be set at 41%, rather than 40%, of the previous year's gross revenue. The Unions claimed that YTV's profit before interest and taxes (PBIT) for certain years of the current term would have been higher had certain management fees charged to YTV by Corus not been included as part of the licensee's operating expenditures. According to the Unions, under Public Notice 2004-2, the CPE requirements associated with the higher level of PBIT should increase from 35% of the previous gross revenues to 41%, rather than to 40%. Further, the Unions disagreed with YTV's suggestion that it could have reduced its reported earnings by increasing the licence fees paid to the production company Nelvana

Limited (Nelvana), which, like YTV, is a wholly owned Corus subsidiary. The Unions submitted that the Commission, as it did in the case of two other Corus licensees (SuperChannel and MovieMax!),<sup>2</sup> should require the licensee to limit spending on programming produced by itself or by a related party to a maximum of 25% of YTV's annual Canadian programming expenditures.

58. In its intervention, the Canadian Association of Broadcasters (CAB) commented generally on the Commission's recent approach to calculating a licensee's CPE. The CAB argued that it is not appropriate that the Commission use historical profitability levels achieved in an analog distribution environment to establish CPE requirements for a future period, given the uncertainty of the transition to digital and high definition (HD) distribution and the reality of the new competitive environment. According to the CAB, to do so could threaten the ability of individual services to adapt as required.

*Licensee's reply*

59. In its reply to interventions, YTV stated that the interveners failed to recognize that YTV's guarantee to expend a minimum of \$222 million on Canadian programming during the next licence term is a firm commitment. It added that a profit-based approach to setting expenditure requirements results in a lower CPE if YTV is unable to maintain its current levels of revenue and expenses.

## **Support of independent Canadian producers**

### **Interventions**

60. In its intervention, the CFTPA stated that YTV should make "a more meaningful contribution to original content created by truly arm's length independent producers." The CFTPA submitted that YTV has made significant use of Nelvana, and stated that it would be appropriate to use the opportunity afforded by YTV's licence renewal to bring the licensee's commitments to independent production closer into line with those of other specialty services, such as YTV's TreeHouse TV.
61. The CFTPA further noted that, when the Commission has licensed other programming services whose principals have held ownership interests in program production companies, the Commission has required such services to limit the amount of related-party production that they may broadcast. The CFTPA noted that the acquisition of Nelvana by Corus occurred in 2000, during YTV's current licence term.
62. The CFTPA thus recommended that YTV be required to ensure that a minimum of 75% of all original Canadian programming consist of independent productions obtained from unaffiliated producers. Furthermore, the CFTPA recommended that 50% of YTV's expenditures on original Canadian production be allocated to arm's length independent production companies.

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<sup>2</sup> See *Licence amendments for SuperChannel and MovieMax!*, Broadcasting Decision CRTC 2003-522, 23 October 2003.

63. CHUM, in its intervention, also addressed the influence of the Corus ownership structure on its related programming services, and noted that the Commission has imposed restrictions relating to the types of programming that these services may air. By way of example, CHUM noted that TELETOON Canada Inc., a specialty service licensee in which Corus holds an indirect 40% ownership interest, has a condition of licence requiring it to acquire 50% of its Canadian programming from non-related producers, while TreeHouse TV must ensure that, in each broadcast month, its programming is entirely different from YTV's programming.

*Licensee's reply*

64. In its reply, YTV reiterated that it is already required to make a contribution to independent production under condition of licence 9, which stipulates that YTV must exhibit a minimum of 90 hours of original, first-run Canadian programs acquired from the independent production sector during each year of its licence term. YTV noted that it is also required to devote one-third of its Canadian programming expenditures to original, first-run Canadian programs commissioned from independent producers by virtue of condition of licence 12. YTV submitted that, over the course of the current licence term, it has been involved in the production of 1,089 hours of original, first-run Canadian productions by independent producers and that, over each year of the licence term, it has exceeded its independent production obligations. YTV deemed this to be a "meaningful and significant contribution."

## **Commission's analysis and determinations**

### **Nature of service**

65. In the Commission's view, three of YTV's proposed amendments to its licence have the potential to directly affect its nature of service and the type of programming broadcast by YTV, including:
- the proposed modifications to condition of licence 1 specifying the audiences that YTV's programming must target, and in particular the proposed deletion of the requirement that a minimum of 30% of its programming must be devoted to children up to the age of 5;
  - the proposed deletion or modification to condition of licence 2, which currently specifies requirements for the scheduling of drama programming having a child or a youth as a major protagonist; and
  - the proposed deletion of condition of licence 3, which currently specifies requirements for the scheduling of programming of particular interest to youth and families.
66. The Commission considers that, in order for it to approve the proposed changes, it must be satisfied that they are consistent with YTV's nature of service and will not make YTV competitive with any other analog or Category 1 digital specialty service.

67. With respect to the proposed amendment to YTV's condition of licence 1, the Commission notes that YTV is licensed to provide a service targeted to children of all ages. The Commission is of the view that YTV should continue to serve preschoolers and young children. It is concerned that approval of the proposed amendment would permit YTV to shift its programming to target an older audience, which could make YTV competitive with the Razer specialty service.
68. The Commission notes that, while YTV stated that it would continue to offer a commercial-free block of programming targeted to young children (except during holiday periods when older children are home from school), it was reluctant to accept a condition of licence requiring that it do so. In this regard, the Commission is not persuaded by YTV's argument that TreeHouse TV would continue to serve the preschool demographic. The Commission notes that TreeHouse TV was licensed as a service that would complement, rather than replace, YTV. The Commission also notes that YTV was licensed following a competitive process to serve, in part, the preschool demographic. Moreover, the Commission considers that YTV currently has sufficient flexibility to serve its target audience, since its performance in providing programming devoted to children, youth and family is assessed on an annual basis, rather than on a weekly or monthly basis.
69. For these reasons, the Commission **denies** YTV's request to amend condition of licence 1.
70. With respect to condition of licence 2, the Commission is persuaded by YTV's submission that the current definition of protagonist may prohibit YTV from broadcasting some drama programming that is of interest to its target audience. YTV cited, as examples, the programs *15 Love* and *What I Like About You*, which feature youth characters as protagonists whose ages will have increased from under 18 to 18 or more during the course of the series. In addition, the Commission considers that the proposal advanced by YTV in its reply to interventions, that condition of licence 2, rather than be deleted, be amended to define a protagonist as one that is "developed with children, youth or families in mind", would provide YTV with an extra measure of flexibility, but would ensure that YTV remains within its nature of service.
71. The Commission is also satisfied that the amendment proposed by the licensee would not allow the service to become directly competitive with another specialty service. Accordingly, the Commission **approves** YTV's proposal and amends the **condition of licence** to read as follows:

The licensee shall devote 100% of the programs in the drama category distributed during the evening broadcast period to programs of particular interest to children, youth and their families through the use of a protagonist that is developed with children, youth or families in mind, examples of which would include an animated character, super hero, animal, child or youth.

72. This is set out in the appendix as condition of licence 2.
73. With respect to the requirement set out in the existing condition of licence 3, that the licensee provide programming of particular interest to youth (age 12-17) and their families during the period from 9 p.m. to midnight, the Commission notes that the requirement was imposed on YTV at the time of its last licence renewal in order to encourage the development of innovative new programming for the youth market. The Commission received no interventions indicating that there is a continuing dearth of programming to serve this market or that YTV has not provided innovative programming to the youth market over the course of its licence term.
74. Further, given that YTV's target audience of those below the age of 12 will likely not form a significant component of YTV's primary viewing audience during the period of 9 p.m. to midnight, the Commission is not persuaded by the CFTPA's argument that the removal of the condition would result in YTV using this programming block to repeat programs intended for much younger viewers that have been aired earlier in the day. Accordingly, the Commission **approves** the deletion of this condition of licence.

#### **YTV's scheduling of non-Canadian programming**

75. Two of YTV's proposed licence amendments call for the deletion of conditions of licence 6 and 10, which regulate the scheduling and the sources of non-Canadian programming. The Commission acknowledges that additional flexibility may be desirable in terms of programming and scheduling. The Commission further notes that YTV is required to devote 60% of the evening broadcast period to Canadian programming, which effectively ensures that YTV's evening schedule is predominantly Canadian.
76. At the same time, the Commission notes that these conditions of licence were designed to ensure that YTV provides programming from a variety of international sources. The Commission is also aware that removal of the limitations may result in greater competition for programming rights amongst licensees (of both conventional and specialty television services), possibly resulting in increased costs and a diminution in the quality of the services that are available.
77. The Commission is of the view that there is a continuing need to ensure that YTV acquires non-Canadian programming from outside of North America, as this contributes to the objective of the *Broadcasting Act* (the Act) that programming be drawn from international sources, as well as local, regional and national sources.
78. The Commission considers, however, that condition of licence 6, which limits the scheduling of non-Canadian drama programs (excluding feature films and specials) to no more than one hour per evening each week from any given non-Canadian country, may be unduly restrictive. The Commission also considers that the removal of this condition would provide the licensee with greater flexibility to meet the needs of its target audience, while still ensuring, by virtue of the retention of condition of licence 10 (and

its requirement that a minimum of 35% of non-Canadian programming be from non-North American sources), that non-Canadian programming originates from a diversity of international sources. Specifically, the Commission considers that it may be redundant for YTV's licence to contain two conditions pertaining to the scheduling and sources of non-Canadian programming.

79. Therefore, the Commission **approves** the removal of condition of licence 6, which required the licensee to devote no more than an average of one hour per evening broadcast period to drama programs produced in any one country other than Canada, excluding feature films and specials.
80. With respect to condition of licence 10, which states that, in each broadcast year, the licensee shall devote a minimum of 35% of its non-Canadian programming to programs from non-North American sources, the Commission has decided to maintain this requirement, as it will ensure that non-Canadian programming originates from a range of international sources. The Commission, therefore, **denies** the proposal to delete this condition of licence. It has been retained as one of the **conditions** set out in the appendix to this decision.

#### **Amount of feature film programming aired during the evening broadcast period**

81. The Commission notes that YTV has not asked to increase the amount of feature films broadcast on its service overall, but has requested the flexibility, through the deletion of condition of licence 7(2), to increase the amount of feature films aired during the evening broadcast period in a given week. The Commission is concerned that removal of the condition in question would give YTV the ability to schedule the equivalent of a feature film almost every night of the broadcast week. The Commission also notes that removal of this condition could increase competition for feature film rights. Moreover, as noted by CHUM, because both YTV and Movie Central are owned by Corus, the deletion of condition of licence 7(2) would give Corus the ability to acquire both first and second window rights to most feature films, which could be detrimental to conventional television networks.
82. The Commission is further persuaded by the CFTPA's argument that YTV has not provided particulars with respect to its intended use of any additional flexibility to broadcast feature films. More specifically, in light of the flexibility granted earlier in this decision, the Commission is of the view that YTV has not sufficiently demonstrated the need to remove this condition of licence.
83. Given the foregoing, the Commission **denies** the proposal to delete the requirements currently set out in condition of licence 7(2). They are retained as a **condition** set out in the appendix to this decision.

### **Canadian programming expenditures**

84. The Commission has considered the Unions' comment and the licensee's reply regarding YTV's Canadian programming expenditures. The Commission has also reviewed the licensee's recent annual financial returns for the current licence term. Based on this review, the Commission is satisfied that YTV's submissions for the current licence term comply with Generally Accepted Accounting Principles and the Commission's CPE policies.
85. Traditionally, the Commission has considered it appropriate that a broadcaster's profitability be taken into account when assessing the contribution it should be called upon to make to the Canadian broadcasting system. At the same time, the Commission is of the view that it would be unfair and, over the long term, potentially counter-productive, to increase the requirements imposed on profitable specialty licensees to a degree that would penalize their financial success and undercut their motivation to continue pursuing increased profit margins.
86. In Public Notice 2004-2, the Commission set out a graduated approach to CPE requirements that the specialty services referred to therein would be required to meet as conditions of their renewed licences. This approach was fully addressed by the applicant and interveners in this proceeding, and the Commission considers it appropriate to adopt it in this case. The Commission is satisfied that this approach is balanced and fair in that it takes into account a service's past financial performance and future projections, and relates its CPE requirements directly to its profitability. For a specialty service such as YTV, which has been in operation for more than one licence term, the Commission considers it is appropriate to calculate the average PBIT margin for all the years that have elapsed under the current licence term.
87. The Commission notes that YTV's average PBIT margin for the last licence term is between 30% and 34%, which is within the range for which, in accordance with Public Notice 2004-2, the Commission has set an increase of five percentage points for Canadian programming expenditures. In YTV's case, the Commission determines that a five percentage point increase from 35% to 40% is appropriate in the circumstances.
88. Accordingly, the Commission requires the licensee, in each year of the new licence term, to expend on Canadian programming 40% of YTV's previous year's gross revenues. A **condition of licence** to this effect is set out in the appendix to this decision.

### **Regional reflection and independent production**

89. Section 3(1)(i)(v) of the Act states that the programming provided by the Canadian broadcasting system should "include a significant contribution from the Canadian independent production sector." The Commission's concern is to ensure that independent production companies that are unaffiliated with a licensee, including producers operating outside of the major centres, have reasonable access to the licensee's program schedule.

90. To that end, in Public Notice 2004-2, the Commission determined that it would be appropriate to establish obligations with respect to the use of independent production. However, because a standard approach for all specialty services would not permit the Commission to consider the inherent differences that exist between one genre of specialty programming and another, the Commission adopted a case-by-case approach, as measured against the expectation that, generally, a minimum of 75% of a specialty licensee's acquired programming be independently produced. Since circumstances change, the Commission also considered it reasonable that such obligations be identified for licensees who may not currently be related to any production company.
91. In *Treehouse TV – Licence renewal*, Broadcasting Decision CRTC 2004-27, 21 January 2004 (Decision 2004-27), the Commission reiterated its objective of ensuring that production companies unaffiliated with the licensees of specialty services have reasonable access to the licensees' program schedules. This is as important in the genre of children's programming as in any genre.
92. Consistent with the approach outlined in Public Notice 2004-2, the Commission expects YTV to ensure that a minimum of 75% of all original, first-run, Canadian programming broadcast by the service during the new licence term is acquired from non-related producers.
93. With respect to regional reflection, the Commission notes YTV's commitments to acquire the best programming for children and youth from across all regions of Canada and to ensure that programs are identifiably Canadian.
94. Consistent with the Commission's objective of promoting greater regional reflection and increasing the exhibition of programming produced outside of the major production centres of Vancouver, Toronto and Montréal, it expects the licensee to ensure that its programming continues to be broadly reflective of all of Canada's regions, and that producers from outside the major production centres have the opportunity to produce programming for its service.
95. As for the CFTPA's recommendations with respect to terms of trade, and as stated in Public Notice 2004-2, the Commission considers that terms of trade agreements between broadcasters and the CFTPA would be to the benefit of all elements of the Canadian broadcasting system, and encourages the establishment of such agreements.

#### **Reflection and portrayal of diversity**

96. YTV stated that it had recently revised its internal programming policies, including those related to the provision of ethnic diversity and strong visible minority role models, with a view to clarifying YTV's expectation regarding the integration of cultural diversity into its programs. YTV stated that it has provided each of its producers with copies of these revised policies, but submitted no details as to what the revisions entailed.

97. With respect to original YTV productions, YTV cited many programs that feature visible minorities as lead characters, including *15/Love*, *Zixx: Level One*, *Mystery Hunters*, *Girlz TV* and *Yvon of the Yukon*. In programs featuring animation, YTV stated that it encourages the artists to design characters that represent different cultural heritages in order to encourage children to recognize that people are not all the same.
98. The Commission notes the efforts of YTV to include characters with disabilities in its programming, such as *My Brand New Life*. The Commission expects the licensee, through its programming and employment opportunities, to continue to reflect Canada's ethno-cultural minorities, Aboriginal peoples and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical, and reflective of Canadian society.
99. The Commission notes that YTV is subject to the Corus corporate cultural diversity plan, which sets out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to presence and portrayal of diversity. The Commission expects the licensee to continue to contribute to diversity, to ensure that the programming broadcast on YTV continues to showcase a diverse range of talent, and to implement the commitments set out in its corporate cultural diversity plan.

#### **Employment equity and on-air presence**

100. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.
101. With respect to on-air presence, the Commission expects the licensees of specialty services to ensure that the on-air presence of members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) is reflective of Canadian society, and that members of these groups are presented fairly and accurately.
102. The Commission expects YTV to take steps during the new licence term to address any gaps in the on-air presence of members of the four designated groups on YTV, specifically with respect to Aboriginal persons and person with disabilities.

#### **Service to persons who are deaf or hard of hearing**

103. The Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed-captioned programming they broadcast. The Commission generally requires all broadcasters to offer a minimum percentage of closed captioned programs.
104. In its licence renewal application, the licensee stated that it was prepared to adhere to a condition of licence that would require it to close caption 90% of all programming broadcast on YTV during each broadcast day of the new licence term.

105. Captioning Consumers of Canada (Captioning Consumers) and Mr. Joe Clark filed opposing interventions raising concerns about the amount and quality of closed captioning on YTV. Captioning Consumers submitted that YTV should be required to caption 100% of its programming, by way of added or acquired captioning.
106. Mr. Clark opposed the renewal of YTV without “stringent requirements” for captioning and description. In particular, Mr. Clark stated that YTV should stop using scroll up captioning for fictional narrative programming and should increase its amount of audio description programming. Mr. Clark stated that it is impossible to follow a fictional narrative program through scroll up captioning due to pacing problems. Mr. Clark added that scroll up captioning is not authorized by existing style manuals, including the CAB’s *Closed Captioning Standards and Protocol Manual for English-language Broadcasters*, and defies decades-long practice.
107. In its reply, YTV noted that, in Decision 2004-27 renewing the licence of TreeHouse TV, the Commission recognized that requiring 100% captioning at all times may not be reasonable. However, YTV stated that it will continue to work on improving the quality, reliability and accuracy of its closed captioning to ensure that it meets the needs of viewers.
108. Consistent with the licensee’s commitment and with the Commission’s general approach for English-language services, the Commission has imposed a **condition of licence** requiring the licensee to close caption 90% of all programming aired during the broadcast day, in each year of the licence term. The condition is set out in the appendix to this decision.
109. The Commission acknowledges the concerns raised by the interveners with regard to captioning, and is currently reviewing its approaches to closed captioning, with a view to improving the quantity and quality of captioning in the Canadian broadcasting system, as set out in *Review of certain aspects of the regulatory framework for over-the-air television*, Broadcasting Notice of Public Hearing CRTC 2006-5, 12 June 2006.
110. The Commission expects the licensee, during the new licence term, to focus on improving the quality, reliability and accuracy of its closed captioning, and to work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet their needs. In particular, the Commission expects YTV to address the concerns raised by Mr. Clark respecting the proper style of captioning to be used for fictional programming, particularly in light of the CAB’s closed captioning style manual.

**Service to persons who are blind or whose vision is impaired**

111. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description and video description (also known as described video). As indicated in Public Notice 2004-2, in

setting described video obligations for specialty services, the Commission's focus has been on services featuring those types of programming, such as drama, documentary and children's programs that best lend themselves to description.

112. YTV stated that it was prepared to adhere to a condition of licence requiring that it broadcast a minimum of eight hours of described video programming per month starting in year two, and to increase that amount to twelve hours per month beginning in the fifth year of the licence term. A **condition of licence** to this effect is included in the appendix to this decision.
113. The Commission also expects the licensee, during the new licence term, to:
- provide audio description wherever appropriate;
  - acquire and broadcast the described version of its program wherever possible; and
  - take the necessary steps to ensure that its customer service is responsive to the needs of persons whose vision is impaired.

#### **Programming delivered across time zones**

114. In *Policy on violence in television programming*, Public Notice CRTC 1996-36, 14 March 1996, the Commission noted concerns expressed by parties that programs originating in certain time zones were being delivered by satellite to viewers in other time zones at hours that would be considered as inappropriate for their broadcast, based on the programs' content. The Commission encourages licensees whose services are distributed over various time zones to consider viewers in all the time zones served and offer the requisite protection when certain programs are scheduled.
115. The Commission wishes to underscore the importance it places on each broadcaster according proper sensitivity to the concerns of its viewers with respect to the scheduling of programming intended for adult audiences, taking into account the time zone differences between where a program originates and where it is received. The Commission expects licensees to demonstrate responsibility, particularly in responding to any complaint.

#### **Compliance with industry codes**

116. In accordance with its usual practice for specialty television services, the Commission is imposing **conditions of licence** requiring the licensee to adhere to industry codes related to sex-role portrayal, advertising to children and the depiction of violence in television programming.

Secretary General



*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*




## Appendix to Broadcasting Decision CRTC 2006-381

### Conditions of licence

1. (a) The licensee shall provide a national, English-language specialty programming service targeted to children, youth and their families. In each broadcast year, a minimum of 30% of the programming distributed on the service shall have as its target audience children up to 5 years of age, a minimum of 48% shall have as its target audience children and youth 6 to 17 years of age, and a maximum of 22% shall have as its target audience families.
- (b) The programming shall be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
  - 1 News
  - 2 (a) Analysis and interpretation  
(b) Long-form documentary
  - 3 Reporting and actualities
  - 5 (a) Formal education and preschool  
(b) Informal education/Recreation and leisure
  - 6 (a) Professional sports  
(b) Amateur sports
  - 7 Drama and comedy
    - (a) Ongoing drama series
    - (b) Ongoing comedy series (sitcoms)
    - (c) Specials, mini-series or made-for-TV feature films
    - (d) Theatrical feature films aired on TV
    - (e) Animated television programs and films
    - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
    - (g) Other drama
  - 8 (a) Music and dance other than music video programs or clips  
(b) Music video clips  
(c) Music video programs
  - 9 Variety
  - 10 Game shows
  - 11 General entertainment and human interest
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos

2. The licensee shall devote 100% of the programs in the drama category distributed in the evening broadcast period to programs of particular interest to children, youth and their families through the use of a protagonist that is developed with children, youth or families in mind, examples of which would include an animated character, super hero, animal, child or youth.
3. Programming distributed by the licensee with families as the target audience shall not include programs from the following categories as set out in item 6 of Schedule I of the *Specialty Service Regulations, 1990*: News (category 1), Analysis and interpretation (category 2a), Sports (category 6); or Music video clips (category 8b).
4. The licensee shall devote not more than 5% of the broadcast year to Music video clips (category 8b).
5. (a) The licensee shall devote no more than 10% of the broadcast year to feature films (category 7d).  
(b) In any seven-day period of Sunday to Saturday, in the evening broadcast period, the licensee shall distribute no more than two feature films.
6. The licensee shall devote not less than 60% of the broadcast year and 60% of the evening broadcast period to the distribution of Canadian programs.
7. In each broadcast year, the programming distributed by the licensee shall include a minimum of 90 hours of original, first-run Canadian programs that have been acquired from the independent production sector by YTV, either through co-production or licensing arrangements.
8. In each broadcast year, the licensee shall devote a minimum of 35% of its non-Canadian programming to programs from non-North American sources. 
9. (a) The licensee shall charge exhibitors of this service a maximum monthly wholesale rate per subscriber of \$0.35 when the service is distributed as part of the basic service. 

 Notwithstanding subsection (a), the licensee shall charge exhibitors of this service in Francophone markets a maximum monthly wholesale rate per subscriber of \$0.09 when the service is distributed as part of the basic service.

- (c) For the purpose of this condition, an exhibitor will be considered to be operating in a Francophone market where the population claiming the French language as its first language represents more than fifty percent of the total population of all cities, towns and municipalities encompassed in whole or in part by the licensed area of the exhibitor, according to the most recent population figures published by Statistics Canada.

10. (a) Subject to subsections (b) and (c), the licensee shall not distribute more than 12 minutes of advertising material during each clock hour.
- (b) In addition to the maximum of 12 minutes of advertising material referred to in subsection (a), the licensee may distribute, during each clock hour, a maximum of 30 seconds of additional advertising material that consists of unpaid public service announcements.
- (c) The licensee shall not distribute commercial messages during any program that has as its target audience children up to 5 years of age.
- (d) The licensee shall not distribute any advertising material other than national advertising.
11. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993, *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993 and in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time:
- in each broadcast year, the licensee shall incur expenses on a "cash" basis of not less than 40% of the annual gross revenues derived from the operation of this service in the preceding year for acquiring and investing in Canadian programming. Of this amount, not less than one-third must be allocated to the development, production and licensing of original, first-run Canadian programs.
12. The licensee shall provide closed captioning for not less than 90% of all programs broadcast during the broadcast day.
13. The licensee shall provide a minimum of eight hours of described video programming per month starting in year two, and will increase that amount to twelve hours per month beginning in the fifth year of the licence term.
14. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council (CBSC).

15. The licensee shall adhere to the provisions of the CAB's *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
16. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the CAB's *Voluntary code regarding violence in television programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the CBSC.

### **Definitions**

For the purposes of these conditions:

all time periods shall be reckoned according to the eastern time zone.

“broadcast day” means the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.

“broadcast week” means the total number of hours devoted by the licensee to broadcasting during seven consecutive broadcast days beginning on Sunday.

“broadcast month” means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast days in a month.

“broadcast year” means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast months in a 12-month period, beginning on 1 September in any year.

“clock hour” means a period of 60 minutes beginning on each hour and ending immediately prior to the next hour.

“Evening broadcast period” means the total time devoted to the broadcast of programs between six o'clock in the afternoon and midnight during the broadcast day.

“original, first-run program” means a program that will be distributed for the first time by the licensee and has never before been distributed by the licensee of any other broadcasting undertaking.