



Broadcasting Decision CRTC 2014-547

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Allarco Entertainment 2008 Inc., the general partner, as well as limited partner with C.R.A. Investments Ltd. (the limited partners), carrying on business as Allarco Entertainment Limited Partnership
Across Canada

Application 2014-0383-1

Super Channel – Licence amendment

*The Commission **denies** an application to amend the broadcasting licence for the national, English-language general interest pay television service Super Channel in order to modify its condition of licence relating to Canadian programming expenditures.*

Background

1. In Broadcasting Decision 2006-193, the Commission approved an application by Allarco Entertainment Inc. (Allarco) for a broadcasting licence to operate a national, English-language general interest pay television service. This service launched in 2007 as Super Channel.
2. In that decision, the Commission required Allarco, by condition of licence, to devote at least \$4 million to the acquisition of, or investment in, Canadian programming during the first year of operations, and 32% of the previous year's revenues in each subsequent year. It further required Allarco, by condition of licence, to expend not less than \$1 million in each broadcast year on regional outreach programs (for a total of \$7 million) and not less than \$2 million in each broadcast year on script and concept development (for a total of \$14 million). These requirements reflected commitments made by Allarco in its original application for a broadcasting licence to operate the approved service and as such were contributing factors in the Commission's decision to approve Allarco's application and deny the other applications considered in the context of the same proceeding.
3. In Broadcasting Decision 2013-468, the Commission renewed the broadcasting licence for Super Channel for a short-term period of four years. It noted that the licensee had failed to meet the above-noted expenditure requirements for the 2008-2009 and 2011-2012 broadcast years, and consequently accumulated a shortfall of \$9,579,122. Noting that Allarco's commitments were made as part of a competitive process, the Commission expressed its concern and disappointment over the

licensee's non-compliance and the fact that a number of the licence amendments requested at that time were sought to reduce the above-noted commitments.

4. However, the Commission granted the licensee's request for relief by reducing its requirements in the new licence term and by requiring the licensee to make up only a portion of the shortfall from the previous licence term. Accordingly, it required the licensee, by condition of licence, to pay \$2 million on regional outreach and \$4 million on script and concept development (for a total of \$6 million) over the next licence term (condition of licence 8 in Appendix 1 to Broadcasting Decision 2013-468). It noted that these shortfall payments would be in addition to the already required expenditures on Canadian programming, regional outreach programs, and script and concept development (conditions of licence 5, 6 and 7 in Appendix 1 to Broadcasting Decision 2013-468).

Application

5. Allarco Entertainment 2008 Inc., the general partner, as well as limited partner with C.R.A. Investments Ltd. (the limited partners), carrying on business as Allarco Entertainment Limited Partnership (Allarco LP), the current licensee of Super Channel,¹ filed an application to amend the broadcasting licence for the service. Specifically, the licensee proposed a modification to the service's condition of licence relating to expenditures on script and concept development, which is set out in Appendix 1 to Broadcasting Decision 2013-468, so that it read as follows (change in bold):

8. In addition to the expenditures required under conditions of licence 5, 6 and 7, the licensee shall expend as payment of the shortfall on its expenditures on regional outreach programs an amount equal to \$500,000 and \$1 million, respectively, on script and concept development in each broadcast year until the end of the current licence term which expires on 31 August 2017. The total amount to be paid equals \$6 million. **The expenditures made pursuant to this condition of licence, for each of the 2014-2015, 2015-2016 and 2016-2017 broadcast years, shall be attributable to the Canadian programming expenditure requirements set out in condition of licence 5.**

6. Condition of licence 5, referred to in the proposed amendment, reads as follows:

5. With respect to Canadian programming expenditures:

(a) The licensee shall expend, on the acquisition of, or investment in, Canadian programs, 30% of its revenue for the previous broadcast year.

¹ As noted in Broadcasting Decision 2008-361, the Commission approved a corporate reorganization within Allarco resulting in the transfer of the assets of Super Channel to the partners of the limited Partnership carrying on business as Allarco LP.

- (b) In any broadcast year of the licence term excluding the final broadcast year, the licensee may expend an amount on Canadian programming that is up to 5% less than the minimum required expenditure for that broadcast year, as set out and calculated in accordance with this condition of licence.
- (c) Should the licensee avail itself of this flexibility in any broadcast year, it shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that broadcast year, the full amount of the previous broadcast year's under spending.
- (d) In any broadcast year of the licence term, the licensee may expend an amount on Canadian programming that is greater than the minimum required expenditure for that broadcast year as set out and calculated in accordance with this condition of licence; in such case, the licensee may deduct:
- (i) from the minimum required expenditure for the next broadcast year of the licence term, an amount not exceeding the amount of the previous broadcast year's overspending; and
 - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the overspending and any amount deducted under paragraph (i) above.
- (e) Notwithstanding the above, during the licence term, the licensee shall expend on Canadian programming, at a minimum, the total of the minimum required expenditures as set out and calculated in accordance with this condition of licence.
7. In Allarco LP's view, the proposed amendment would put it on a more equitable footing with its competitors, which are licensed on a group basis, and allow it to be more agile in terms of responding to changing programming requirements.

Interventions

8. The Commission received interventions in opposition to this application from the Canadian Media Production Association (CMPA), the Writers Guild of Canada (Writers Guild), the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and the Forum for Research and Policy in Communications (FRPC). Allarco LP replied collectively to the interventions. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.

Commission's analysis and decisions

9. After examining the application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

- the effect that the proposed amendment would have on the licensee's payment of the shortfall amount;
- whether Super Channel's current Canadian programming expenditure (CPE) requirements are in line with those of other services; and
- whether the licensee has demonstrated economic need for the proposed licence amendment.

Effect of proposed amendment on the payment of the shortfall amount

10. The Commission has already seen fit to reduce the repayment of the above-noted shortfall and substantially reduce a number of expenditure requirements despite the licensee's non-compliance with these requirements. Furthermore, the Commission was fully aware of the licensee's financial situation when it imposed the condition of licence requiring the licensee to pay the shortfall amount. Although Allarco LP stated that the proposed amendment would not relieve it of the requirement to pay the above-noted \$6 million shortfall, the Commission considers that it would effectively absolve Allarco LP of its non-compliance and therefore be inconsistent with the determinations in this regard set out in Broadcasting Decision 2013-468.

Super Channel's Canadian programming expenditure requirements compared to those of other services

11. According to Allarco LP, Super Channel's CPE level is greater than that imposed on ownership groups and most other Category A services. It stated that the service's full range of expenditure requirements on Canadian production initiatives (CPE, regional outreach, and script and concept development) total 34% of its revenues. The licensee further submitted that it is at a disadvantage compared to other general interest pay television licensees that operate multiple services, given that it operates only one service and therefore is unable to take advantage of provisions that provide flexibility to attribute portions of CPE across services within a designated group (see the group-based approach set out in Broadcasting Regulatory Policy 2010-167).
12. The Commission notes that, as set out in condition of licence 5(a) above, Super Channel's CPE requirement is set at 30% of the service's revenues for the previous broadcast year. This level is consistent with CPE requirements for similar pay television services (Mpix, TMN and TMN Encore, all 30%; and Movie Central and Encore Avenue, both 31%). The additional 4% cited by Allarco LP reflects the shortfall payment that resulted from the licensee's above-noted non-compliance with the condition of licence relating to spending on regional outreach and script and concept development in the last licence term.
13. Further, although the other pay television services noted above are not currently subject to identical conditions of licence relating to regional outreach or script and concept development, they must nevertheless meet certain similar requirements and expectations, such as regional production plans and outreach efforts, as set out in Broadcasting Decision 2011-441.

14. In regard to the flexibility provisions of the group-based licensing approach, the Commission considers the licensee's arguments to be a mischaracterization of that approach. The flexibility provisions in place allow for the allocation of spending between different types of services, and do not reduce a group's overall CPE level. As a consequence, a licensee that is unable to take advantage of allocating spending across multiple services is not necessarily disadvantaged in terms of the requirements relating to its CPE level.
15. In light of the above, the Commission finds that the CPE requirements of Super Channel are in line with those of other pay television services.

Economic need for the proposed amendment

16. According to Allarco LP, the reasons leading to Super Channel's financial difficulties are two-fold: in addition to missing out on potential subscription revenues as a result of Rogers Cable Communications Inc.'s distribution of the service, the service was unavailable to 5.5 million subscribers when it first launched because broadcasting distribution undertakings did not provide distribution of the service in high definition. In absence of these factors, it estimated that it could have earned an additional \$12 million in its first year of operation.
17. The licensee also submitted that pay television services in general are under financial pressure since audiovisual subscription services delivered over the Internet, such as Netflix, which do not have CPE requirements, are enjoying increased subscriber levels. It added that Netflix has a number of titles that are identical to those that have been licensed to Super Channel.
18. The Commission has examined the financial projections submitted by Allarco LP in its application. Although the proposed amendment would be beneficial to Super Channel, the Commission is of the view that the financial viability of the service is not dependent on approval of the present application. Further, expenditures on production, in particular on script and concept development, may result in benefits to the service should these expenditures result in the production of attractive new programming.
19. In light of the above, the Commission finds that Allarco LP has not demonstrated that the proposed licence amendment is necessary for the financial viability of its service.

Conclusion

20. In the Commission's view, Allarco LP has not provided the Commission with sufficient justification for the proposed amendment to be approved. It considers that the licensee is, in fact, re-arguing its case as it was presented at the time of the licence renewal for Super Channel, when it applied for other CPE-related amendments.
21. Consequently, the Commission **denies** the application by Allarco Entertainment 2008 Inc., the general partner, as well as limited partner with C.R.A. Investments Ltd. (the limited partners), carrying on business as Allarco Entertainment Limited

Partnership, to amend the broadcasting licence for the national, English-language general interest pay television programming undertaking Super Channel in order to modify its condition of licence relating to Canadian programming expenditures.

Secretary General

Related documents

- *Various independent pay and specialty Category A services – Licence renewals*, Broadcasting Decision CRTC 2013-468, 23 April 2013
- *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *Super Channel – Corporate reorganization (Assets)*, Broadcasting Decision CRTC 2008-361, 22 December 2008
- *Applications for new pay television services*, Broadcasting Decision CRTC 2006-193, 18 May 2006