



Broadcasting Decision CRTC 2020-289

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References: Part 1 licence renewal applications posted on 31 January 2020 and 5 February 2020

Ottawa, 24 August 2020

Toronto Maple Leafs Network Ltd.
Ontario (excluding the Ottawa valley)

Toronto Raptors Network Ltd.
Across Canada

Public record for these applications: 2019-1038-1 and 2019-1039-9

Leafs TV and NBA TV – Licence renewals

*The Commission **renews** the broadcasting licences for the regional, English-language discretionary service Leafs TV and for the national, English-language discretionary service NBA TV from 1 September 2020 to 31 August 2025.*

Applications

1. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), 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 deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act.
2. On 3 June 2019, the Commission issued Broadcasting Notice of Consultation 2019-192, which listed the television services for which the broadcasting licences would expire 31 August 2020 and therefore needed to be renewed for the services to continue their operations.
3. In response, Toronto Maple Leafs Network Ltd. and Toronto Raptors Network Ltd. (the licensees)¹ filed applications to renew the broadcasting licences for the regional, English-language discretionary service Leafs TV (2019-1039-9) and for the national, English-language discretionary service NBA TV (2019-1038-1). The Commission did not receive any interventions in regard to these applications.

¹ Both licensees are owned by Kilmer Sports Inc. (25%) and 8047286 Canada Inc. (75%). As for 8047286 Canada Inc., it, through subsidiary corporations, is owned by Rogers Communications Inc. (50%) and by BCE Inc. and an associated holding company (50%).

4. The licensees confirmed that they would adhere to the standard requirements for discretionary services set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436. Further, they proposed that Leafs TV and NBA TV devote, respectively, 25% and 12% of the previous broadcast year's gross revenues to Canadian programming expenditures (CPE).

Commission's analysis and decisions

Apparent non-compliance

5. Among other things, section 3(1) of the Act declares that programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose (section 3(1)(p)). In accordance with this aspect of the broadcasting policy and pursuant to its authority in section 9(1), the Commission has imposed conditions of licence regarding the provision of closed captioning.
6. In particular, condition of licence 5, set out in Appendix 1 to Broadcasting Regulatory Policy 2010-786-1, requires the licensee to provide closed captioning of all English- and French-language advertising, sponsorship messages and promos by no later than the fourth year of the licence term. An examination of the program logs filed by the licensees for the 2016-2017 broadcast year indicated that these standards were not met.
7. The licensees stated that they had transitioned their trafficking and programming systems to a different platform during the 2016-2017 broadcast year. They submitted that all commercial and promotional items broadcast by their services were closed captioned during this transition period. However, due to software limitations, the licensees filed inaccurate closed captioning reports that did not accurately reflect the degree to which Leafs TV and NBA TV had complied with closed captioning requirements.
8. The licensees added that they updated their software in July 2018 to enable accurate reporting. Since then, their reporting has accurately reflected their compliance. They also put in place an additional precautionary measure. Specifically, they now only purchase content from external providers that provide closed captioned content.
9. The instances of apparent non-compliance appear to be isolated, and the Commission is satisfied that the measures put in place by the licensees address these instances of apparent non-compliance and will ensure compliance going forward.
10. In light of all of the above, including the explanation provided by the licensees, the Commission is satisfied that the licensees were in compliance with condition of licence 5 in Appendix 1 to Broadcasting Regulatory Policy 2010-786-1 and that the issue will not reoccur. Accordingly, the Commission finds the licensees in compliance with condition of licence 5 and does not consider that further corrective measures are required.

Canadian programming expenditures

11. Sections 3(1)(e) and 3(1)(s)(i) of the Act declare that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming and that private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming. In accordance with this aspect of the broadcasting policy and pursuant to its authority in section 9(1), the Commission has imposed conditions of licence requiring programming undertakings to contribute in various ways to the creation of Canadian programming, including imposing CPE requirements.
12. In Broadcasting Regulatory Policy 2015-86, the Commission announced that CPE requirements would be implemented for all English- and third-language discretionary services with over 200,000 subscribers, and that these requirements would be set at a minimum spending level of 10%, established on a case-by-case basis and based on historical expenditure levels.
13. As noted above, the licensees proposed that Leafs TV and NBA TV devote, respectively, 25% and 12% of the previous broadcast year's gross revenues for those services to CPE.

Leafs TV

14. In regard to Leafs TV, the applicant, Toronto Maple Leafs Network Ltd., submitted that a 25% CPE requirement would be appropriate for this service, despite higher average historical spending and higher annual spending over the past three years, since this level of spending, in the applicant's view, is appropriate for a small discretionary channel. The applicant acknowledged that Leafs TV's historical spending is greater than its proposed 25% CPE requirement, and it indicated that it intended to exceed this minimum required level of spending, which would be treated as a floor not a ceiling.
15. After analyzing historical spending by Leafs TV over a five-year period, the Commission determined that Leafs TV has devoted an average of 43% per year of the previous year's revenues to CPE. However, due to fluctuations in revenue and spending on CPE, the service's annual percentages of spending devoted to CPE fluctuated significantly from one year to the next. Therefore, the Commission is of the view that a CPE requirement based exclusively on an average of historical levels of spending by Leafs TV would not accurately reflect the manner in which the service has been operated, and may not be appropriate.
16. Given that Leafs TV is partly owned by BCE Inc. (and an associated holding company) and Rogers Communications Inc., the Commission considers that Leafs TV is not in the same position as other independent discretionary services. Rather, the Commission is of the view that its approach to determining an appropriate CPE requirement for Leafs TV should be consistent with its approach to determining CPE requirements for services that belong to larger broadcasting groups.

17. After weighing the historical spending by Leafs TV against the financial reality of the service, the Commission considers that a 30% CPE requirement is appropriate. The Commission acknowledges that this is higher than the CPE requirement proposed by the applicant. However, the Commission also considers that the nature of the programming offered by Leafs TV makes it very unlikely that the service would not be able to meet this threshold.²
18. In light of the above, the Commission finds a 30% CPE requirement for Leafs TV to be appropriate. A **condition of licence** to that effect is set out in Appendix 1 to this decision.

NBA TV

19. In regard to NBA TV, the applicant, Toronto Raptors Network Ltd., submitted that a 12% CPE requirement would be appropriate, despite NBA TV's higher average historical spending level of 15% over the three-year period spanning 2017 to 2019, since the service's historical levels of spending fluctuated significantly from year to year. According to the applicant, a 12% CPE requirement would afford NBA TV the flexibility that it requires for the next licence term, and this required level of spending would be treated as a minimum threshold that it would strive to exceed.
20. After analyzing historical spending by NBA TV over a five-year period, the Commission determined that NBA TV has devoted an average of 13% per year of the previous year's revenues to CPE. The Commission also notes that the service's revenues have, with the exception of a slight decrease in 2017, steadily increased over that same five-year period. Moreover, NBA TV reported healthy profit before interest and tax margins in each of those five years.
21. With respect to the applicant's statement regarding the volatility of NBA TV's historical spending on CPE, the Commission agrees that the service's annual percentages of spending on CPE did fluctuate significantly. However, after weighing these fluctuations in spending against the service's current financial performance, the Commission is of the view that the applicant has not provided sufficient justification for NBA TV's CPE requirement to be based on anything other than the service's historical expenditures.
22. In light of the above, the Commission finds a 13% CPE requirement for NBA TV to be appropriate. A **condition of licence** to that effect is set out in Appendix 2 to this decision.

² Sports events are deemed Canadian if (a) the productions are done in house or (b) if independent, a Canadian company exercises control over the production; the event takes place in Canada or, if outside Canada, Canadian-based teams participate; and any commentators are Canadian.

Credits towards Canadian programming expenditure requirements

23. The broadcasting policy set out in section 3(1) of the Act also provides that the Canadian broadcasting system should reflect the linguistic duality of Canada and the special place of aboriginal peoples within Canadian society (section 3(1)(d)(iii)).
24. The Commission considers it appropriate to adopt an incentive to encourage the reflection of Indigenous peoples in the broadcasting system. Specifically, each licensee will receive a 50% credit towards its CPE requirements for expenditures on Canadian programming produced by Indigenous producers, up to a maximum (expenses plus credit) of 10% of that licensee's overall CPE requirement when combined with the credit discussed below regarding official language minority community (OLMC) reflection. Only programming costs counting towards CPE as defined in Public Notice 1993-93 will be considered eligible for the credit.
25. The Commission is also of the view that a similar credit could encourage greater onscreen reflection of OLMCs in the broadcasting system. Consequently, each licensee will receive a 25% credit against its CPE requirements for expenditures on Canadian programming produced by OLMC producers, up to a maximum (expenses plus credit) of 10% of that licensee's overall CPE requirement when combined with the credit discussed above regarding Indigenous reflection. Once again, only programming costs counting towards CPE as defined in Public Notice 1993-93 will be considered eligible for the credit. Further, the OLMC producer must be an independent producer as defined by the Commission and (i) if in the province of Quebec, the original language of the production must be English or (ii) if outside of the province of Quebec, the original language of the production must be French.
26. Accordingly, **conditions of licence** reflecting these determinations are set out in the appendices to this decision.

Conclusion

27. In light of all of the above, the Commission **renews** the broadcasting licences for the regional, English-language discretionary service Leafs TV and for the national, English-language discretionary service NBA TV from 1 September 2020 to 31 August 2025. The terms and **conditions of licence** are set out in the appendices to this decision.

Secretary General

Related documents

- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2019-192, 3 June 2019
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *The reporting of Canadian programming expenditures*, Public Notice CRTC 1993-93, 22 June 1993

This decision is to be appended to each licence.

Appendix 1 to Broadcasting Decision CRTC 2020-289

Terms, conditions of licence, expectations and encouragements for the regional, English-language discretionary service Leafs TV

Terms

The licence will take effect 1 September 2020 and expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall, in each broadcast year, devote not less than 30% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming.
3. Subject to condition 4, the licensee may claim, in addition to its expenditures on Canadian programming:
 - a) a 50% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year;
 - b) a 25% credit against its Canadian programming expenditure requirements 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; or
 - ii. the programming is produced outside the province of Quebec and the original language of production is French.
4. The licensee may claim the credits calculated in accordance with condition 3 until the expenditures made on Canadian programming produced by Indigenous producers and by official language minority community producers, including credits, reach a combined maximum of 10% of the Canadian programming expenditure requirement for the undertaking.

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.
 - 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.
6. In the two years following the end of the licence term ending 31 August 2020, the licensee shall report and respond to any Commission enquiries relating to the expenditures on Canadian programming made by the licensee for that term.
7. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming that occurred during the licence term ending 31 August 2020.

Definitions

For purposes of these conditions:

Indigenous producer: means an individual who self-identifies as Indigenous, which includes First Nations, Métis or 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. For the purposes of the definition of “independent production company,” “Canadian” includes any individual who self-identifies as Indigenous and resides in Canada, whereas “Canadian company” includes a production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and reside in Canada.

Official language minority community producer (OLMC): 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 programs in English, have its head office in Quebec and be owned and operated by a resident of Quebec; or
- b) if it produces original programs in French, have its head office outside Quebec and be owned and operated by a resident outside of Quebec.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

Appendix 2 to Broadcasting Decision CRTC 2020-289

Terms, conditions of licence, expectations and encouragements for the national, English-language discretionary service NBA TV

Terms

The licence will take effect 1 September 2020 and expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall, in each broadcast year, devote not less than 13% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming.
3. Subject to condition 4, the licensee may claim, in addition to its expenditures on Canadian programming:
 - a) a 50% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year;
 - b) a 25% credit against its Canadian programming expenditure requirements 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; or
 - ii. the programming is produced outside the province of Quebec and the original language of production is French.
4. The licensee may claim the credits calculated in accordance with condition 3 until the expenditures made on Canadian programming produced by Indigenous producers and by official language minority community producers, including credits, reach a combined maximum of 10% of the Canadian programming expenditure requirement for the undertaking.

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.
 - 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.
6. In the two years following the end of the licence term ending 31 August 2020, the licensee shall report and respond to any Commission enquiries relating to the expenditures on Canadian programming made by the licensee for that term.
7. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming that occurred during the licence term ending 31 August 2020.

Definitions

For purposes of these conditions:

Indigenous producer: means an individual who self-identifies as Indigenous, which includes First Nations, Métis or 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. For the purposes of the definition of “independent production company,” “Canadian” includes any individual who self-identifies as Indigenous and resides in Canada, whereas “Canadian company” includes a production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and reside in Canada.

Official language minority community producer (OLMC): 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 programs in English, have its head office in Quebec and be owned and operated by a resident of Quebec; or
- b) if it produces original programs in French, have its head office outside Quebec and be owned and operated by a resident outside of Quebec.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.