



Broadcasting Decision CRTC 2020-321

PDF version

References: 2020-54, 2020-54-1 and 2020-54-2

Ottawa, 1 September 2020

Atlantic Digital Networks Ltd.

Across Canada

Public record for this application: 2019-0551-4

Public hearing in the National Capital Region

8 June 2020

ToonAvison – Licensing of a discretionary service

*The Commission **approves** an application by Atlantic Digital Networks Ltd. for a broadcasting licence to operate the currently exempt, national discretionary service ToonAvison. The service will be licensed as a national, English-language discretionary service.*

Application

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. Atlantic Digital Networks Ltd. (Atlantic) filed an application for a broadcasting licence to operate the currently exempt, national discretionary service known as ToonAvison as a licensed service.
3. The service is devoted to animated programs for children and their families. It currently operates as an exempt service in accordance with the Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers set out in Broadcasting Order 2015-88.
4. In addition to the standard conditions of licence for discretionary services set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436, the applicant requested an exception to the requirement relating to the exhibition of Canadian programs set out in section 2(1) of the *Discretionary Services Regulations* (the Regulations). Specifically, the licensee proposed that it be required, until 1 June 2020, to devote not less than 25% of the total programming broadcast during the broadcast year and the evening broadcast period to Canadian programs.

5. The applicant stated that it would adhere to a condition of licence requiring it to devote at least 10% of the previous broadcast year's gross annual revenues to the acquisition of and investment in Canadian programming.
6. The Commission received an intervention in support from an individual and an intervention in comment from DHX Television Ltd., doing business as WildBrain Television (WildBrain).

Intervention

7. WildBrain argued that the Commission should impose a minimum Canadian programming expenditure (CPE) requirement of 20% since children's programming services are important and funding for this programming is declining. WildBrain noted that while Broadcasting Regulatory Policy 2015-86 establishes the minimum CPE requirement at 10%, it does not take into account any of the outlying factors that should go toward the determination of a CPE level, including in this case, the importance of the children programming sector and the fact that the applicant's proposed level would be lower than other similar types of services offering similar programming.
8. In its reply, Atlantic argued that the Commission's policies do not indicate that children's services should have higher than the minimum of 10% CPE upon licensing. The applicant further stated that, while services of the same nature as ToonAvision have been subject to higher CPE levels in the past, other factors played a major role in the establishment of the regulatory requirements for those services. As a result of this context and the Commission's clear policies, the applicant argued that WildBrain's arguments should not apply to the current application.

Commission's analysis and decision

Canadian programs exhibition

9. Section 10(1)(a) of the of the Act provides that the Commission may make regulations respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs. Pursuant to this provision and in accordance with sections 3(1)(e) and 3(1)(s) of the Act which require undertakings to contribute to the creation and presentation of Canadian programming, the Commission has imposed requirements on licensees related to the broadcast of Canadian programs.
10. In addition, pursuant to section 9(4) of the Act, the Commission has exempted discretionary television programming undertakings serving fewer than 200,000 subscribers from licensing and associated regulatory obligations provided that they adhere to certain requirements including obligations related to the broadcast of Canadian programs.
11. In Broadcasting Order 2015-88 (the Order), the Commission determined that discretionary undertakings that are subject to the provisions of that Order are permitted, in their first, second and third year of operation a ramp-up of the

requirements for the exhibition of Canadian programs (not less than 15%, 25% and 35% of all programs broadcast in each broadcast year and in the evening broadcast period respectively, with the 35% continuing thereafter the third year of operation).

12. The applicant proposed an exception to the requirement in section 2 of the Regulations regarding the exhibition of Canadian programs to allow it to devote no less than 25% of its broadcast day to Canadian programs, until June 2020. The applicant stated that a lowered requirement would allow it to ramp up its spending on Canadian programs and would be appropriate given the Broadcasting Order 2015-88 under which it currently operates.
13. As a licensee, pursuant to section 2 of the Regulations, Atlantic would be required to devote at least 35% of the time that it devotes to broadcasting in a broadcast year to the broadcast of Canadian programs.
14. As of 1 June 2020, whether licensed or exempt, the service would be required to devote 35% of its programming to Canadian programs, under either the Broadcasting Order 2015-88 or a licence pursuant to the standard conditions and requirements for discretionary services as set out in Broadcasting Regulatory Policy 2016-436. The intention of the ramp-up period for Canadian programs under Broadcasting Order 2015-88 is to enable new services beginning their operations to develop and concretize their business with a presumption that such services will begin operations with minimal subscriptions. Licensed services generally have more than 200,000 subscribers and, as such, this ramp-up is not intended to continue into a licenced period of operation.
15. This request was made under the assumption that the licensing process would have been completed and a decision published before 1 June 2020. Given the timing of the publication of this decision, the Commission notes that this request has been rendered moot.
16. In light of the above and the redundancy of the request given the timing of this publication, the Commission **denies** the request by Atlantic for an exception to the exhibition of Canadian programs.

Canadian programming expenditures

17. 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.

18. In Broadcasting Regulatory Policy 2015-86, the Commission determined that discretionary services with over 200,000 subscribers should be subject to a CPE requirement. It established 10% of gross revenues as the minimum level of CPE for those services and stated that CPE for licensed services would be established in a case-by-case manner and based on historical levels.
19. WildBrain submitted that a higher CPE requirement should be imposed on ToonAvision considering that the proposed service will broadcast children's programming. With the exception of limits on professional sports programming, the Commission does not generally prescribe limits on the genre of programming that may be offered by a discretionary service. Given that Atlantic could change the genre of programming offered by its service at any time, the nature of the services chosen by the licensee at the time of licensing is not a sufficient rationale for setting a specific CPE level.
20. The Commission considers that taking into account programming genre and other factors when establishing CPE requirements would be a significant deviation from the established policy outlined in Broadcasting Regulatory Policy 2015-86, incongruous with past licensing practices and unfair to the applicant. The Commission therefore considers that a 10% CPE requirement would be appropriate.
21. In light of the above, the Commission imposes a 10% CPE requirement for ToonAvision. A **condition of licence** to this effect is set out in the appendix to this decision.
22. 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 Indigenous peoples within Canadian society (section 3(1)(d)(iii)).
23. The Commission considers it appropriate to adopt an incentive to encourage the reflection of Indigenous peoples in the broadcasting system. Specifically, for each of their stations, licensees will receive a 50% credit toward 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 toward CPE as defined in Public Notice 1993-93 will be considered eligible for the credit.
24. 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 receives 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 toward 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.

25. **Conditions of licence** reflecting these determinations are set out in the appendix to this decision.

Conclusion

26. In light of all of the above, the Commission approves the application by Atlantic Digital Networks Ltd. for a broadcasting licence to operate the national, English language discretionary service ToonAvision as a licensed discretionary service. The terms and **conditions of licence** are set out in the appendix to this decision.

27. ToonAvision will be subject to the *Discretionary Services Regulations*. In addition, the distribution of this service will be subject to the requirements set out in the *Broadcasting Distribution Regulations*.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2020-54, 10 February 2020
- *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Exemption order respecting discretionary television programming undertakings serving fewer than 200,000 subscribers*, Broadcasting Order CRTC 2015-88, 12 March 2015
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *The reporting of Canadian programming expenditures*, Public Notice CRTC 1993-93, 22 June 1993

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2020-321

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

Terms

The licence will expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence for discretionary services 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. In each broadcast year, the licensee shall devote to the acquisition of or investment in Canadian programming at least 10% of the previous year's gross revenues of the undertaking. For the first year of the licence term, the calculation of the 10% shall be based on the previous year's gross revenues of the previously exempt service.
3. Subject to condition of licence 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; and
 - 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 of licence 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.

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. In regard to the definition of “independent production company,” “Canadian” includes a person 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 (OLMC) producer means a company that meets the definition of “independent production company” and that, if operating in the province of Quebec, produces original English-language programming or, if operating outside of the province of Quebec, produces original French-language programming.

Clarification for OLMC producer

To be considered an OLMC producer in Canada, a production company must:

- a) if it produces original 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.