



Broadcasting Decision CRTC 2006-379

Ottawa, 18 August 2006

Food Network Canada Inc.
Across Canada

*Application 2005-1430-9
Public Hearing in the National Capital Region
1 May 2006*

Food Network Canada – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty programming undertaking known as Food Network Canada 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 Food Network Canada Inc. to renew the broadcasting licence, which expires 31 August 2006, for the national, English-language specialty programming undertaking known as Food Network Canada (Food Network).
2. In its licence renewal application, Food Network Canada Inc. proposed to operate this undertaking under the same terms, conditions and definitions as those in effect under the current licence.
3. On the basis of its review of this licence renewal application and having considered the interventions received, the Commission **renews** the broadcasting licence for Food Network 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.

Interventions

4. The Commission received several interventions addressed to Food Network's licence renewal application. The Canadian Film and Television Production Association (CFTPA) recommended that the Commission review the historical financial record of Food Network to ascertain whether this licensee's financial commitment to Canadian programming should increase beyond the existing requirement of 40% of revenues. In addition, the CFTPA recommended that the Commission require Alliance Atlantis

Broadcasting Inc. (Alliance Atlantis), which holds effective control of the licensee, to establish “terms of trade” with the independent production community as a means of ensuring transparency and fairness in the licensing of programming.

5. In its intervention, the Canadian Association of Broadcasters (CAB) commented generally on the Commission’s recent approach to calculating a licensee’s Canadian programming expenditures (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.
6. Mr. David Hersh commented that many of Food Network’s programs are just product or company advertisements and should be regulated as advertisements rather than as programming.
7. Captioning Consumers of Canada (Captioning Consumers) raised concerns about the amount and quality of closed captioning. According to Captioning Consumers, Food Network should provide 100% captioning and should acquire the closed-captioned versions of programs at all times. Mr. Joe Clark of Toronto expressed concern regarding what he alleged was the misuse of closed captioning by the licensee. In addition, Mr. Clark commented generally about the limited amount of description that specialty services are required to provide, and argued that the required level of description should be increased.

Applicant’s reply

8. In response to the intervention by the CFTPA regarding Food Network’s CPE requirements, Alliance Atlantis stated that the licensee is operating under changing market conditions, including the transition to digital distribution, changing technologies, the cost of moving to HD broadcasting, and increased competition brought about by the introduction of new services. Alliance Atlantis indicated that a CPE requirement in excess of the current level of 40% of revenues would have a direct negative impact on Food Network’s financial performance.
9. As for the CFTPA’s comment regarding the establishment of terms of trade with the independent production community, Alliance Atlantis stated that it is committed to fair dealings with all independent producers across Canada.
10. In response to the intervention by Mr. Hersh, Alliance Atlantis stated that Food Network is in compliance with its condition of licence that it air no more than 12 minutes of advertising material during each clock hour. In addition, Alliance Atlantis commented that the service has adhered to all requirements regarding product placement in its programming.

11. With respect to the interventions by Captioning Consumers and Mr. Clark, Alliance Atlantis noted that Food Network is in compliance with its requirement to close caption a minimum of 90% of all programming during the broadcast day by the end of the licence term and to ensure that the service responds to the needs of the hearing and visually impaired. Alliance Atlantis also indicated that it is committed to improving the performance of Food Network in these areas. Specifically, it noted commitments by Food Network to create an in-house closed captioning department and to develop an in-house style guide to ensure quality control, with a focus on punctuation, spelling and research.

Commission's analysis and determinations

Canadian programming expenditures

12. The Commission notes that, in its application, Alliance Atlantis indicated that higher CPE requirements beyond 40% would reduce the operating profits of Food Network by approximately \$7.1 million, a 19% decrease over its next licence term. It added that increasing the CPE requirement of a licensee based on past profit before interest and taxes (PBIT) levels penalizes entrepreneurial success and assumes that past market fundamentals directly correlate with future performance. Alliance Atlantis stated that, in the next licence term, it expects the market to be more competitive and new technologies to challenge existing business models. It also submitted that the current CPE level is appropriate for the nature of Food Network's service.
13. Traditionally, the Commission has considered it appropriate to take a broadcaster's profitability 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.
14. In *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice 2004-2, 21 January 2004 (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.
15. The Commission notes that Food Network's average PBIT margin for the last licence term is between 25% and 29%, which is within the range for which, in accordance with Public Notice 2004-2, the Commission has set an increase of four percentage points for

Canadian programming expenditures. In Food Network's case, the Commission determines that a four percentage point increase from 40% to 44% is appropriate in the circumstances.

16. Accordingly, the Commission requires that, beginning 1 September 2006, the licensee, in each year of the new licence term, expend on Canadian programming 44% of Food Network's previous year's gross revenues. A **condition of licence** to this effect is set out in the appendix to this decision.

Advertising

17. The Commission notes Mr. Hersh's comments on the amount of advertising broadcast by Food Network. As stated in its condition of licence, Food Network is allowed to broadcast a maximum of 12 minutes of advertising material during each clock hour. The Commission is satisfied that Food Network has adhered to this condition of licence.

Regional reflection and independent production

18. Section 3(1)(i)(v) of the *Broadcasting Act* (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 unaffiliated with the licensee, including producers from outside the major centres, have reasonable access to the licensee's program schedule.
19. The Commission notes the licensee's commitments to building relationships with regional producers across the country for original programming and the numerous measures taken by Food Network aimed at reflecting Canada's regional diversity from coast to coast.
20. Food Network is, and will continue to be, subject to a condition of licence requiring that it ensure that a minimum of 75% of all Canadian programs broadcast be produced by independent production companies. In addition, 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 the programming aired by Food Network 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.
21. The Commission notes the CFTPA's recommendation that the licensee establish a terms of trade agreement. As stated in Public Notice 2004-2, the Commission considers that terms of trade agreements between broadcasters and the independent production community 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

22. In its renewal application, Food Network outlined its plans to diversify its programming, build a broadcasting environment that is representative of the market place it serves, and create an employment environment that values and fosters different cultures. Further, Food Network stated its full commitment to ensuring appropriate representation of those within the four designated groups, as well as to providing for representation of other groups who may experience barriers within the workplace, such as gays and lesbians. The Commission notes that Food Network has established a recruitment advertising campaign through the Equity Network that reaches associations targeting the four designated groups. The licensee has also expanded its recruitment outreach programs to all minority groups.
23. The Commission expects the licensee to continue, through its programming and employment opportunities, 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.
24. The Commission notes in this regard that Food Network is subject to the Alliance Atlantis 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 Food Network 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

25. 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.
26. 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.
27. The Commission expects Food Network 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 Food Network, particularly with respect to persons with disabilities.

Service to persons who are deaf or hard of hearing

28. 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.
29. The licensee stated that it would adhere to a condition of licence that it close caption 90% of all programming on Food Network during each broadcast day of the new licence term.
30. Consistent with this 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 of licence is set out in the appendix to this decision.
31. With respect to the concerns raised by Captioning Consumers and by Mr. Clark, the Commission notes that it 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. The licensee should take the interveners' concerns into consideration as it develops the in-house style guide noted earlier in this decision.
32. The Commission further expects the licensee to focus on improving the quality, reliability and accuracy of its closed captioning during the new licence term, and to work with representatives of the deaf and hard of hearing community to ensure that the captioning provided by Food Network continues to meet their needs.

Service to persons who are blind or whose vision is impaired

33. 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 establishing the minimum levels of described video programming that specialty services should provide, 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.
34. In the Food Network renewal application, Alliance Atlantis indicated that it had not yet introduced described programming to the Food Network service, but that it had begun to request that suppliers provide described versions of programs when they are available. It also indicated that it was forming relationships with independent producers with a view to offering described video on the Food Network and on the other programming services in which it holds an ownership interest.

35. In addition, Alliance Atlantis stated that Food Network is one of a group of services whose programming, and its accessibility to persons who are blind or whose vision is impaired, would be readily and effectively enhanced by the addition of audio description. It noted that a great deal of its programming inherently provides some accessibility to visually impaired persons even without any formal video description.
36. The Commission notes the licensee's commitment to broadcast a minimum of two hours of described video programming per month, and to increase that amount to four hours per month beginning in the seventh year of the new licence term. The Commission expects the licensee to fulfil this commitment.
37. 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

38. 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.
39. 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

40. 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 2006-379

Conditions of licence

- 1 (a) The licensee shall provide a national, English-language specialty programming service that is dedicated solely to the broadcast of entertaining, informational, and instructional programming about food and nutrition, specifically related to: (i) the culture of food; (ii) food selection, and preparation, and cooking instruction; and (iii) presentation and entertaining.
 - (b) The programming must be drawn exclusively from the following categories, as set out in Schedule 1 to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 5 (b) Informal education/Recreation and leisure
 - 7 (d) Theatrical feature films aired on TV
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
 - (c) The licensee shall not broadcast more than one feature film from category 7(d) per broadcast week. All films must have food as a central theme.
2. In each broadcast year, the licensee shall:
 - (a) devote to the exhibition of Canadian programs not less than 50% of the broadcast day and of the evening broadcast period; and
 - (b) ensure that 80% of all Canadian programs broadcast are original Canadian programs.
3. 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, and in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993:

- (a) In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 44% of the gross revenues derived from the operation of this service during the previous broadcast year;
 - (b) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to five percent (5%) less than the minimum required expenditure for that year calculated in accordance with this condition; 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;
 - (c) In each broadcast year of the licence term, where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
 - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
 - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
 - (d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
4. A minimum of 75% of all Canadian programs broadcast by the licensee shall be produced by independent production companies. For the purposes of this condition, an "independent production company" is defined as a production company of which Alliance Atlantis Communications Inc. owns or controls, directly or indirectly less than 30% of the equity.
- 5.(a) Except where otherwise provided herein, the licensee shall not broadcast more than 12 minutes of advertising material during each clock hour.
- (b) Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.

- (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 paid advertising.
6. The licensee shall charge each exhibitor of this service a maximum monthly wholesale rate of \$0.10 per subscriber, where the service is carried as part of the basic service.
 - 7.(a) The licensee shall be governed by the 5 August 1999 Letter of Agreement among Alliance Atlantis Communications Inc., Corus Entertainment Inc., and Television Food Network G.P. (TVFN).
 - (b) The licensee shall obtain the prior approval of the Commission in respect of i) any material change to the 5 August 1999 Letter of Agreement, ii) any shareholders agreement, iii) any trademark licence agreement with TVFN and iv) any program supply agreement with TVFN.
 8. For the purposes of section 18(5) of the *Broadcasting Distribution Regulations*, the licensee is only authorised to provide its service to the licensed service area of Class 1 cable distribution undertakings that were distributing the U.S. service TV Food Network on an analog basis on **4 July 2000**.
 9. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast day.
 10. 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).
 11. 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.
 12. 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:

“original Canadian program” is defined as a Canadian program that, when first broadcast by the licensee, had not previously been broadcast by any other Canadian broadcasting undertaking.

“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.

“national paid advertising” means advertising material that is purchased at a national rate and receives national distribution on the service.

All time periods shall be reckoned according to the Eastern time zone.