



## Broadcasting Decision CRTC 2005-442

Ottawa, 31 August 2005

**Astral Broadcasting Group Inc.**  
Across Canada

*Application 2004-1433-4  
Public Hearing in the National Capital Region  
16 May 2005*

### **Ztélé – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the specialty programming undertaking known as Ztélé, from 1 September 2005 to 31 August 2012. 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 Astral Broadcasting Group Inc. (Astral) to renew the broadcasting licence for the French-language specialty programming undertaking known as Ztélé, which expires 31 August 2005.
2. In its licence renewal application, the licensee proposed an amendment to the condition of licence concerning the nature of service. The proposed licence amendment is discussed below.
3. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence for Ztélé, from 1 September 2005 to 31 August 2012. The licence will be subject to the **conditions** specified therein and to the **conditions** set out in the appendix to this decision.

### **Nature of service**

4. In its renewal application, the licensee requested the deletion of the condition of licence which prohibits Ztélé from distributing any programs drawn from category 7(d) Theatrical feature films aired on TV. The deletion of this condition of licence would allow the licensee to broadcast programs from this category.

5. According to the licensee, the approval of the proposed licence amendment would enable Ztélé to offer more drama programming that reflects the service's themes. The licensee also submitted that the addition of category 7(d) to the list of categories from which Ztélé may draw its programming would correct an initial deficiency and enable it to respond much more appropriately to the expectations of those members of its target audience between the ages of 18 and 49 and to reduce the number of complaints.
6. The licensee further noted that it would not compete with conventional broadcasters to acquire recent first-run films because of its commitment to acquire only those feature films that reflect the service's themes and that have been copyrighted for at least seven years.
7. The licensee also noted that, in order to maintain a highly diversified schedule, it is planning to broadcast no more than two fiction feature films per week in prime time, although each of these feature films could be rebroadcast twice at other times during the broadcast day.

### **Interventions**

8. The Commission received one opposing intervention from TQS inc. (TQS) and interventions in support of Ztélé's licence renewal as well as comments from the Association des producteurs de films et de télévision du Québec (APFTQ) and the Société des auteurs de radio, télévision et cinéma (SARTEC).
9. TQS opposed the request to delete the condition of licence prohibiting the licensee from broadcasting category 7(d) feature films. In TQS' view, the proposed licence amendment is inconsistent with the distinct nature of Ztélé's programming. According to TQS, Ztélé's conditions of licence should remain the same because several other specialty services are already authorized to broadcast category 7(d) feature films and approval of this amendment could result in undue competition by Ztélé with conventional broadcasters for exhibition rights.
10. TQS submitted that, if the Commission were to approve the amendment, it should restrict the licensee to broadcasting one feature film per week in prime time, and require the licensee to broadcast only those films that have been copyrighted for at least 10 years in order to protect the exhibition window of conventional broadcasters. TQS added that these feature films should be consistent with the licensee's nature of service.
11. APFTQ supported Ztélé's proposed licence amendment and maintained that the proposal would not prejudice either Canadian French-language broadcasters or Canadian producers, and would contribute to diversifying the programming that Francophone viewers can access.

12. According to SARTEC, Ztélé should become profitable in 2005. SARTEC therefore proposed that the Commission consider using a method for imposing the licensee's requirements with respect to expenditures on Canadian programming similar to the method set out 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). SARTEC also proposed that Ztélé's licence be renewed for a term of three or four years.

#### **Licensee's reply**

13. In response to TQS, Astral reiterated that Ztélé proposed to broadcast only those category 7(d) feature films that have been copyrighted for at least seven years (which is the industry standard and has been approved in several Commission decisions) precisely to prevent any potential interference with conventional broadcasters during the first run of the feature films (theatre, home video and conventional, pay and pay-per-view television). In fact, this commitment gives conventional broadcasters a first exhibition window.
14. In response to SARTEC, the licensee does not support the application of the approach set out in Public Notice 2004-2 for all analog Canadian specialty services. Nevertheless, the licensee submitted that, given Ztélé's historical negative profit before interest and tax (PBIT) margin for its first licence term, this approach could not be used to justify an increase in Canadian programming expenditures.
15. Given that the average PBIT margin for Canadian analog specialty services was 24.37% in 2004 and that Ztélé's historical PBIT margin is in a negative position at -32.95%, Astral contended that there is no reason to cite the approach set out in Public Notice 2004-2 to justify an increase in Ztélé's Canadian programming expenditures.

#### **Commission's analysis and determination**

16. The Commission notes TQS' arguments regarding the proposed amendment to allow Ztélé to broadcast category 7(d) programming. The Commission notes, however, that several specialty services have been authorized in the past to draw programming from category 7(d) and that the broadcast of this programming by these services has not had a significant impact on conventional broadcasters. Further, the seven-year copyright requirement proposed by the licensee ensures a reasonable window for conventional broadcasters to acquire rights to broadcast recent first-run films on conventional television.

17. The Commission finds that the addition of category 7(d) does not raise any concerns regarding the integrity of Ztélé's nature of service, particularly since the licensee is already authorized to draw programming from drama categories without restriction (i.e., from categories 7(a) and 7(c)). Accordingly, the Commission **approves** the licensee's request to add category 7(d) to the list of program categories from which it may draw its programming. Ztélé will be restricted by condition of licence to broadcasting two feature films per week in prime time; however, each of those films may be rebroadcast twice during other periods of the day. A **condition of licence** to this effect is set out in the appendix to this decision.
18. The Commission reminds the licensee that all programs broadcast from category 7(d) must be consistent with Ztélé's nature of service.

#### **Canadian programming expenditures**

19. The Canadian programming expenditure requirements imposed on specialty services at the time of licensing or at licence renewal are determined by the Commission on a case-by-case basis. The Commission's requirements are based on such considerations as the genre of the service proposed by the applicant, the availability of Canadian programming falling within that genre, and the applicant's other plans and commitments. The Commission also takes into account the applicant's proposed wholesale fee and the type of carriage on broadcasting distribution undertakings that the service would receive.
20. 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, for the Commission 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.
21. In Public Notice 2004-2, the Commission set out a graduated approach to Canadian programming expenditure requirements that the specialty services referred to therein would be required to meet during renewed licence terms. For services' first licence renewal, the approach was based upon the historical average PBIT margin for each service over the initial licence term, excluding the launch year, which was not considered to be representative. Those specialty services referred to in Public Notice 2004-2 that had recorded an average PBIT margin of under 20% during their first licence term would not be required to increase their spending on Canadian programming at licence renewal time. The approach was addressed by the applicant and interveners, and the Commission considers it appropriate to adopt it in the present case. The Commission is satisfied that the approach is balanced and fair in that it takes into account a service's past financial performance and future projections, and relates its Canadian programming expenditure requirements directly to its profitability.

22. The Commission notes that Ztélé's average PBIT margin for its first licence term is below the 20% threshold. In the circumstances, the Commission considers that an increase in Canadian programming expenditures is not appropriate at this time. For the new licence term, the Commission directs the licensee to maintain Ztélé's Canadian programming expenditures at 48% of its gross revenues from the previous year. A **condition of licence** to this effect is set out in the appendix to this decision.

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

23. 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 have reasonable access to the licensee's program schedule.
24. The Commission notes the numerous initiatives undertaken by Ztélé aimed at reflecting the various regions of Quebec and Canada in its programming.
25. In accordance with its objective, the Commission expects the licensee to ensure that the programming aired by Ztélé reflects all of Canada's regions. The Commission also expects the licensee to continue to provide opportunities for producers working outside the major production centres to supply programming for the service.

#### **Dubbing**

26. The Commission notes that it received a comment by APFTQ regarding the dubbing of foreign programming and requesting French dubbing of all foreign programming paid for directly by the licensee be done in Canada. Further to APFTQ's recommendation and, as proposed by the licensee, the Commission expects the licensee to ensure that the dubbing of all foreign programming paid for directly by the licensee is dubbed in French in Canada.

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

27. Pursuant to section 5(4) of the Act, the Commission does not regulate or supervise matters concerning employment equity in relation to broadcasting undertakings with more than 100 employees, as they are subject to the *Employment Equity Act*. However, the Commission continues to regulate matters such as on-air presence.
28. The Commission expects the licensees of specialty television 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.
29. In this regard, the licensee stated that it does not have any on-air employees. However, the Commission expects Ztélé to give high priority to representing members of the four designated groups in its original productions.

### **Cultural diversity**

30. All broadcasting licensees, including those that operate specialty services, have a responsibility to contribute to the reflection and portrayal of Canada's cultural diversity in furtherance of the policy objectives contained in section 3(1)(d) of the Act. Specifically, broadcasters share responsibility for assisting in the development of a broadcasting system that accurately reflects Canada's ethno-cultural minorities, Aboriginal peoples and persons with disabilities. Accordingly, broadcasters must ensure that the portrayal of such groups, through their presence and participation on-screen, is accurate, fair and non-stereotypical.
31. The Commission notes the initiatives that the licensee has undertaken in this regard. During the current licence term, the licensee filed a corporate cultural diversity plan with the Commission setting out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to presence and portrayal of cultural diversity.
32. The Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in its corporate cultural diversity plan. The Commission further expects the licensee to incorporate persons with disabilities into its cultural diversity corporate planning and to ensure that this is reflected in its annual reports on cultural diversity.

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

33. 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.
34. In the context of its licence renewal application, the licensee stated that it was prepared to make a commitment by condition of licence, to gradually increase the percentage of all its programming that will be closed captioned, starting at 57% in the first year and achieving 80% in the last year of its new licence term. The licensee added that it has also set itself the general objective of achieving a captioning level of 90% in the sixth year of its new licence term.
35. The Commission generally requires English-language services to close caption a minimum of 90% of all their programming. In the past, French-language services were required to caption a lower percentage of their programming, in recognition of the greater challenges involved in captioning French-language programming. However, the Commission notes that it is now appropriate to require that French-language broadcasters close caption the same percentage of programming as their English-language counterparts.

36. The Commission notes that the licensee has indicated that it was prepared to make a commitment to close caption 57% of all of its programming, starting in the first year of its new licence term and to gradually increase that percentage to 80% of all of its programming starting in the last year of its new licence term. Consistent with the Commission's general approach for French-language services, the Commission expects the licensee to respect its captioning commitments and is imposing a **condition of licence** requiring the licensee to close caption at least 90% of all programming aired during the broadcast day, beginning no later than 1 September 2010. The **condition of licence** is set out in the appendix to this decision.
37. The Commission further expects that, during the new licence term, the licensee will focus on improving the quality, reliability and accuracy of its closed captioning, and work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet their needs.

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

38. Section 3(1)(p) of the Act states that, as part of the broadcasting policy for Canada, "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose". Accordingly, the Commission expects all broadcasters to work toward improving the accessibility of their programming for persons who are blind or whose vision is impaired.
39. 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).
40. In recent decisions renewing the licences of specialty services, the Commission expected licensees to provide audio description wherever appropriate, to undertake upgrades to permit the delivery of described video on a secondary audio program (SAP) channel, and to acquire and broadcast described video programming wherever possible. Where appropriate, the Commission also encouraged specialty service licensees to provide at least one hour per week of described video programming, increasing by an additional hour per week in each successive year of their licence terms.
41. Furthermore, as indicated in Public Notice 2004-2, the Commission has not imposed any specific requirements on services whose programming is music-based, or is oriented towards sports, or news and information. Rather, 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 described video.

42. The Commission notes the steps the licensee has taken during the current licence term to provide improved access to viewers who have visual impairments. The licensee intends to make the independent producers, which provide programs for Ztélé, more aware of the benefits for people who are visually impaired of having the program host provide, wherever possible and appropriate, audio description of certain information elements that appear on screen in textual or graphic form. The licensee also indicated that it is closely following technical developments that will improve access to Canadian programming services for people who have visual impairments, and that it intends to participate in the industry forums where these issues will be examined.
43. The Commission will continue to adopt a case-by-case approach, as stated in Public Notice 2004-2. The Commission has considered Ztélé's arguments that significant technical upgrades would first be required to provide described video using a SAP channel. The Commission further notes that Ztélé has a negative historical PBIT margin and that its profitability is very recent. Accordingly, the Commission determines that it is appropriate to allow the licensee four years to plan its activities.
44. Consistent with the Commission's approach for services offering drama-based programming as set out in Public Notice 2004-2, and given the nature of the service and the programming offered, the Commission determines that it is appropriate to require the licensee to provide a minimum of two hours of described video programming each week, beginning no later than 1 September 2009. A **condition of licence** to this effect is set out in the appendix to this decision. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service.

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

45. 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.
46. 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**

47. 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 2005-442

### Conditions of licence

1. The licensee shall provide a national French-language specialty service devoted entirely to science and technology, the earth and its secrets, space exploration, the paranormal and science fiction, lifestyles and computer science. The programming must 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:
  - 2 (a) Analysis and interpretation
  - (b) Long-form documentary
  - 5 (b) Informal education/Recreation and leisure
  - 7 (a) Ongoing drama series
  - (c) Specials, mini-series or made-for-TV feature films
  - (d) Theatrical feature films aired on TV
  - 10 Game shows
  - 11 General entertainment and human interest
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
2. All feature films drawn from category 7(d) broadcast by the licensee must have been copyrighted for at least seven years before the date of broadcast.
3. The licensee shall broadcast no more than two (2) feature films drawn from category 7(d) per week in prime time. These feature films may be rebroadcast twice in other periods during the broadcast day.
4. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 50% of the broadcast day and not less than 40% of the evening broadcast period.
5. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast day, beginning no later than 1 September 2010.
6. 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 48% 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.
7. (a) Subject to subsection (b), the licensee shall not distribute more than twelve (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 any paid advertising material other than paid national advertising;
  - (d) In addition to the twelve (12) minutes of advertising material, the licensee may broadcast partisan political advertising during an election period.
8. In each broadcast year of the licence term, the licensee shall provide a minimum of two hours of described video programming during each broadcast week, beginning no later than 1 September 2009. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service.
  9. The licensee shall charge each exhibitor of this service a maximum wholesale rate of \$0.50 per subscriber per month, where the service is distributed as part of the basic service.
  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.

For the purposes of these conditions of licence, all time periods shall be calculated according to Eastern standard time; the terms "broadcast year", "evening broadcast period" and "clock hour" shall have the same meaning as those set out in the *Television Broadcasting Regulations, 1987*; the term "broadcast day" shall mean a 24-hour day commencing at 4 a.m. each day, or any other period approved by the Commission, "broadcast week" shall have the same meaning as that set out in the *Radio Regulations, 1986*; and the term "paid national advertising" shall mean advertising material as defined in the *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service.