



Broadcasting Decision CRTC 2006-382

Ottawa, 18 August 2006

Astral Broadcasting Group
Across Canada

*Application 2005-1459-8
Public Hearing in the National Capital Region
1 May 2006*

VRAK.TV – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the national specialty programming undertaking known as VRAK.TV 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 from Astral Broadcasting Group (Astral) to renew the broadcasting licence, which expires 31 August 2006, for the national French-language specialty programming undertaking known as VRAK.TV.
2. On the basis of its review of this licence renewal application and having considered the interventions received, the Commission **renews** the broadcasting licence for VRAK.TV 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.
3. In its renewal application, the licensee proposed the following amendments:
 - to increase the age of its target audience to include adolescents 15 to 17 years of age;
 - to eliminate the restriction on the broadcast of advertising material and allow VRAK.TV to distribute not more than 12 minutes of national advertising material during each clock hour, and as a result, waive the partial indexing mechanism of its monthly wholesale rate set out in its current condition of licence, which calls for an annual increase of the maximum wholesale rate of the service equal to the consumer price index (CPI) less 2%; and
 - to increase, from 35% to 41%, the percentage of the service's gross operating revenue of the previous year that is to be devoted to Canadian programming expenditures (CPE).

Interventions

4. The Commission received interventions in support of VRAK.TV's licence renewal, as well as comments from the Canadian Association of Broadcasters (CAB), the Société des auteurs de radio, télévision et cinéma (SARTEC), the Union des artistes (UDA) and TQS inc. (TQS). The interveners' concerns are discussed in detail below.

Broadening the audience

5. SARTEC argued that if the Commission were to allow VRAK.TV to broaden its niche and reorient its service to focus more on adolescents, VRAK.TV would slowly become a service directed at youth and families, like YTV, to the disadvantage of Francophone children. SARTEC therefore recommended that VRAK.TV's nature of service focus exclusively on children and youth up to 14 years of age during each broadcast day between 6:00 a.m. and 9:00 p.m., and that, outside this period, the programming offered by the licensee target a youth audience up to 17 years of age.
6. SARTEC argued that VRAK.TV has successfully created a [translation] "safe harbour" for children 14 and under, without advertising, and is doing very well financially. Although SARTEC noted that it understands the licensee's desire to increase its net earnings, it does not see the benefits of Astral's proposal for the 14-and-under age group, for Francophone parents looking for a safe harbour for their children, or for the Canadian French-language broadcasting system.
7. According to SARTEC, if Astral's proposal were accepted, there would be a risk that the nature of VRAK.TV's service would shift toward programming that might contain advertising, particularly when adolescents are at home, i.e., on weekdays after 4:00 p.m. and on weekends.
8. SARTEC also was of the view that VRAK.TV would be highly motivated to reduce its programming targeting an audience aged 2 to 6 years with the approval of the digital service VRAK Junior.
9. The UDA argued that preschool programming should remain a priority for Quebec society and recommended that VRAK.TV maintain a minimum amount of daily programming (Monday to Friday) for a preschool audience.
10. According to the UDA, in an effort to maximize advertising sales, VRAK.TV could be tempted to direct its programming exclusively to adolescents and drop the 2 to 12 years audience, thus transforming VRAK.TV into a general interest service. The UDA wanted to avoid a situation where adolescents are better served than the under-13 age group. The UDA considered it unfortunate that there is a lack of children's programming across general interest and specialty services, and was of the view that VRAK.TV, which is the only youth service distributed as part of the basic service, should fulfil this mandate.

Authorization to broadcast advertising material

11. Without suggesting that adolescents aged 15 to 17 years are very well served by French-language television, SARTEC wanted to ensure that the introduction of advertising to VRAK.TV did not result in children under-12 years being abandoned for the more profitable audience of youth aged 13 to 17 years. According to SARTEC, because of the relative lack of French-language children's programming on the general interest and specialty services, it is essential that the basic service offered by distribution undertakings continue to include a channel that broadcasts programs targeting the under-13 audience throughout the day and in the early evening. VRAK.TV is the only service that can fulfil this mandate. SARTEC also requested that the Commission not authorize the licensee to broadcast advertising material before 9:00 p.m.
12. With respect to the indexing mechanism, SARTEC noted that this mechanism has had no impact because the increase in the CPI has never been high enough, on an annual basis, to justify an increase in VRAK.TV's monthly wholesale rate when VRAK.TV is distributed as part of the basic service of distribution undertakings. As a result, given VRAK.TV's exceptional profitability, an increase in its monthly wholesale rate is not required, according to SARTEC. Consequently, waiving the indexing mechanism of VRAK.TV's monthly wholesale rate, as the licensee proposed, would probably have no impact on this rate in the future and, for all intents and purposes, the waiver would be of no consequence.

Canadian programming expenditures

13. In its intervention, the Canadian Association of Broadcasters (CAB) commented generally on the Commission's recent approach to calculating CPE as a percentage of annual gross revenues. The CAB argued that it is not appropriate for the Commission to use historical profitability levels achieved in an analog distribution environment to establish CPE requirements for a future period, given the uncertainty generated by the adoption of *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006 (Public Notice 2006-23), the uncertainty of 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.
14. According to SARTEC, VRAK.TV's proposal to increase the percentage of its revenues devoted to CPE simply reflects the approach established by the Commission for licence renewals for specialty services with similar profit before interest and tax (PBIT) margins.

First-run original Canadian programs and fiction programs

15. Although it supported VRAK.TV's licence renewal, SARTEC expressed its concern that, apart from VRAK.TV and Télétoon, private-sector French-language television does not broadcast many Canadian children's programs at this time. Not only is the television offering for children limited, but on the French-language side, there are few original Canadian programs produced in French available to all broadcasters.

16. According to SARTEC, VRAK.TV makes a positive contribution to Canada's French-language television landscape, and the intervener would like it to continue to do so. That being said, SARTEC submitted that, given its financial success, VRAK.TV could make a greater contribution to the Canadian broadcasting system. Moreover, the licensee's proposed amendments are consistent with efforts already under way to transform VRAK.TV from a child-oriented service to a more general interest service.
17. Accordingly, SARTEC proposed an increase in VRAK.TV's original Canadian programming requirement from 104 hours to 148 hours per year for the next licence term. Also, for the purposes of this new requirement, SARTEC proposed amending the definition of original first-run French-language program to reflect the most recent Canal Famille renewal,¹ but adding, among other characteristics, the concept of production in French. The new wording would exclude programs written and produced in a language other than French.
18. SARTEC submitted that any new authorization allowing VRAK.TV to broadcast advertising should be subject to a requirement to broadcast no less than 52 hours per year of original first-run Canadian French-language fiction programming (thereby excluding programs written and produced in a language other than French). According to SARTEC, this would be a reasonable compromise, given VRAK.TV's excellent financial performance (achieved so far without advertising), and given the role VRAK.TV could play in training young artists, as well as the current problems with fiction programming on French-language television
19. The UDA argued that increasing CPE from 35% to 41% and introducing advertising would make it possible to invest more heavily in French-language Quebec youth fiction. The UDA stated that investment in youth programming, particularly youth fiction, is essential because it is a key element of our television production. According to the UDA, there is a pressing need to commit to and invest in original Canadian French-language programming. The UDA therefore recommended that VRAK.TV broadcast 150 hours of original programming each year. Furthermore, and given the importance that should be placed on original French-language Quebec fiction, the UDA recommended that VRAK.TV broadcast 50 hours of original first-run Canadian French-language fiction in each broadcast year.

Dubbing

20. The UDA submitted it is reasonable and appropriate to require that all Canadian programs and series broadcast by VRAK.TV be dubbed in Canada, even where the licensee has not invested money in the original financing. The UDA also suggested that the Commission initiate a consultation on the Canadian content value assigned to Canadian programs that are dubbed abroad.

¹ Decision CRTC 2000-139, 4 May 2000.

TQS

21. TQS formally opposed the licensee's proposal to amend the licence of this specialty service, which targets a youth audience, by broadening its target audience and broadcasting advertising material from national advertisers for 12 minutes each hour. TQS also argued that the wholesale rate established by the Commission reflects the specific nature of this service and the lack of advertising in its programming. TQS further argued that Astral, in its application, provided no reasonable proof that it is absolutely necessary for it to broaden its audience and access advertising revenues in order to fulfil its obligations over the next licence term.

Licensee's replies

Broadening the audience

22. Astral submitted that its application to broaden its audience of children and youth from up to 14 years to up to 17 years is reasonable, warranted and supported by all the individual television viewers who intervened, and by a large segment of the independent production community, and that it would have none of the negative impacts that TQS and SARTEC raised without providing evidence in support.
23. According to Astral, as noted in its application and in response to additional questions by the Commission, it does not in any way intend to reduce its child and youth audience, but rather to broaden it slightly from the previous limit of 14 years of age to include children and youth up to 17 years of age in order to reach all Francophone children and youth aged up to 17 years. Astral explained that it did not want the Commission to eliminate its 2 to 5 years audience, for example, in order to include the 15 to 17 years age group.
24. Astral further explained that its intent is to serve all Francophone children and youth up to 17 years of age. In response to the concerns of the three interveners cited, Astral stated that it is prepared to make a firm commitment to that effect, i.e., to commit to broadcasting on VRAK.TV programs aimed at Francophone children and youth in all age groups included in the target audience that defines the nature of the service.
25. Astral submitted that it is not relevant or appropriate to impose on VRAK.TV a condition of licence establishing a specific percentage of programming aimed at the 0 to 5 years audience, the 6 to 12 years audience or the 13 to 17 years audience, or even the 6 to 9 years, 10 to 14 years or 15 to 17 years age groups, to be broadcast weekly or annually, or to specify a particular time of day when programs targeting any of these groups or subgroups must be broadcast.
26. Astral added that, since going into operation, Canal Famille/VRAK.TV has never been subject to regulations establishing the percentage of its programming schedule that must be allocated to programs targeting a specific group or subgroup at a specific time of day. This has not, however, prevented it from regularly broadcasting programs targeting all the age groups in its target audience.

27. For all these reasons, Astral submitted that there is no valid reason to impose these additional obligations, nor any need for the Commission to take action to ensure that programs targeting the preschool audience or adolescents are broadcast during specific times adapted to these individual age subgroups.

Authorization to broadcast advertising material

28. Astral raised the argument that VRAK.TV is Canada's only analog specialty service, public or private, that is currently denied access to advertising revenues. Furthermore, at least a dozen Canadian specialty services, analog and digital alike, whose programming partly or exclusively targets children and youth are licensed to broadcast advertising, including services aimed solely at the preschool audience.
29. VRAK.TV intends to comply fully with the provisions of the Quebec *Consumer Protection Act* and not broadcast any commercial advertising message targeting children 13 years of age and under, whether during programming aimed at the 0 to 5 years, 6 to 12 years or 13 to 17 years audiences. Furthermore, VRAK.TV voluntarily committed not to broadcast any commercial advertising messages of any kind whatsoever during programming targeting the preschool audience (0 to 5 years of age).
30. VRAK.TV asked the Commission to reject proposals to limit the broadcasting of advertising messages to the evening broadcast period, and *a fortiori* to the period after 9:00 p.m., which would amount to giving with one hand while taking with the other, thereby significantly reducing VRAK.TV's potential to earn advertising revenues. Astral further noted that the Commission has not imposed these types of restrictions even on services targeting a preschool audience exclusively.

Canadian programming expenditures

31. Astral agreed with the CAB concerning the general application of the mechanism for calculating CPE requirements as a percentage of annual gross revenues as adopted by the Commission at the licence renewals of the 22 specialty services authorized in 1996. In Astral's view, this mechanism is inequitable and inappropriate, particularly given the uncertainty generated by the adoption of *Digital migration framework* (Public Notice 2006-23). According to Astral, eliminating the "dual status" enjoyed by some services, including VRAK.TV, in the digital distribution environment as of 1 September 2007, makes this mechanism even more inappropriate. Astral further noted that today, half of Canadian and Quebec cable subscribers are digital subscribers, and by the time dual status is eliminated as announced by the Commission, 60% of all cable subscribers in Quebec and elsewhere in Canada will be digital subscribers.
32. That being said, Astral agreed to maintain its commitment to increase from 35% to 41% the portion of VRAK.TV's previous year's gross revenues to be devoted to CPE during each year of the next licence term. Astral submitted that this percentage would be appropriate given the specific circumstances of its current renewal application.

First-run original Canadian programs and fiction programs

33. Astral noted that, over its current licence term, VRAK.TV has fulfilled and even significantly exceeded its condition of licence requiring it to broadcast no less than 104 hours of original first-run Canadian programming by broadcasting at least 230 hours more than the minimum requirement set out in the condition of licence. Taking only original French-language programming into account, VRAK.TV exceeded the minimum requirement by more than 95 hours.
34. SARTEC and the UDA both cited the significant decrease in the production of Canadian programming for children noted by the Canadian Audio-Visual Certification Office between 1999 and 2005 to justify an increase in the obligations imposed on VRAK.TV. Astral responded that VRAK.TV is in no way responsible for and took no part in this decrease. On the contrary, VRAK.TV's expenditures on original Canadian programming increased between 1999 and 2005. Astral noted that, if there has been a marked decrease in the production of Canadian children's programming, it is because all other broadcasters, specifically conventional private and public broadcasters, have significantly reduced their expenditures in this area.
35. Astral submitted that, if it is to continue to fulfil its mandate, it must be able to continue to draw from all the programming categories that define its nature of service, and to vary their amounts from year to year and season to season to reflect the aspirations and expectations of its young audience. Astral therefore argued that it would be inappropriate and inconsistent with the nature of VRAK.TV's service – which has always been defined in terms of its target audience and not specific programming categories – to impose on VRAK.TV annual requirements in terms of percentages or numbers of hours of original Canadian programming drawn from specific categories or subcategories.
36. With respect to the proposals to increase the Canadian original first-run programming requirement from 104 hours to 148 or 150 hours, Astral submitted that imposing such an increase by condition of licence is neither necessary nor warranted. In Astral's view, the fact that VRAK.TV has exceeded its obligation in this regard should be interpreted as evidence that it is not necessary to introduce measures to ensure that the licensee acts as a responsible broadcaster, and not as an invitation to increase its obligations via conditions of licence. Astral further noted that this increase would not be warranted, particularly given the many uncertainties generated by the economic, regulatory and competitive environment in which VRAK.TV will be operating during its next licence term.
37. Astral also noted that there is no assurance that the sources of public and mixed financing for Canadian programs available to programming services over the last licence term will remain at the same level in the future. On the contrary, even if they remain at the same level, these sources will have to be shared by a steadily growing number of services, and the share obtained by each individual service will necessarily be less. The

federal and provincial governments could also very well decide to reduce the value of the refundable tax credits for Canadian production, or their contributions to the Canadian Television Fund or public funding agencies in the coming years.

Dubbing

38. According to Astral, its approach to dubbing is the same for all the specialty services it operates. Each time an Astral channel pays for dubbing a program produced in a language other than French, it has the dubbing done in Canada by a Canadian company.
39. Furthermore, in response to the UDA's concerns, the licensee is prepared to make the following additional commitment. For any Canadian program produced in a language other than French that it acquires or in which it is involved at the financing stage, the licensee would:
 - indicate to the producer or distributor its clear preference for a version dubbed into French in Canada; and
 - inform the producer or distributor, in detail, of the benefits of Telefilm Canada's dubbing assistance fund and the Quebec government's tax relief program for dubbing.

Commission's analysis and determinations

Broadening the audience

40. The Commission has noted the interveners' concerns about broadening VRAK.TV's audience to include programming targeting adolescents aged 15 to 17 years. As pointed out by the interveners to this proceeding, the Commission is of the view that adding programs targeting this age group does not conflict with VRAK.TV's mandate to target children and youth in all age groups, particularly given that VRAK.TV is the only French-language specialty service that is distributed as part of the basic service and is mandated to serve children of all ages. With this greater flexibility, the licensee will be able to meet the needs of adolescents aged 15 to 17 years, an age group that is not widely served by broadcasters.
41. The Commission is also of the view that this additional flexibility should not be to the detriment of programs targeted to groups aged 0 to 5 years, 6 to 11 years, or those aged 12 to 14 years. However, given the licensee's firm commitment to broadcast on VRAK.TV programming targeting Francophone children and youth in all age groups, the Commission has reflected this commitment in the wording of VRAK.TV's nature of service, set out in the appendix to this decision, to address the interveners' concerns that VRAK.TV's nature of service could shift toward an older target audience. In light of the preceding, the Commission **approves** the application by Astral Broadcasting Group to

broaden the audience of VRAK.TV and allow it to include programming targeting adolescents aged 15 to 17 years and therefore expects that the licensee continue to establish its program schedule in a manner that reflects, in an equitable fashion, all of the age groups that it serves in compliance with its nature of service.

Authorization to broadcast advertising material

42. The Commission has noted the concerns regarding the broadcast of advertising material on VRAK.TV. The Commission is, however, of the view that the licensee's commitments to comply fully with the provisions of the *Consumer Protection Act* and not broadcast any commercial advertising message of any kind whatsoever during programming targeting the preschool audience (0 to 5 years) are sufficient and do not require additional restrictions to protect VRAK.TV's audience.
43. Furthermore, during the next licence term, revenues from the broadcast of advertising material would constitute significant additional revenues, a large portion of which could be reinvested in CPE to the benefit of the entire independent production industry.
44. In light of the preceding, the Commission **approves** VRAK.TV's application for authorization to broadcast a maximum of 12 minutes per hour of advertising material. A **condition of licence** to that effect is set out in the appendix to this decision. Accordingly, as proposed by the licensee, the Commission also **approves** VRAK.TV's proposal to waive the partial indexing mechanism of its monthly wholesale rate set out in its current condition of licence.

Canadian programming expenditures

45. 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.
46. 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), 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.

47. The Commission notes that VRAK.TV's average PBIT margin for the last licence term is between 35% and 39%. Under the approach described in Public Notice 2004-2, the Commission has set an increase of six percentage points for Canadian programming expenditures. In VRAK.TV's case, the Commission determines that a six-percentage-point increase from 35% to 41% is appropriate in the circumstances.
48. Accordingly, as proposed by Astral, the Commission requires that, beginning 1 September 2006, the licensee, in each year of the new licence term, expend on Canadian programming 41% of VRAK.TV's previous year's gross revenues. A **condition of licence** to this effect is set out in the appendix to this decision.

First-run original Canadian programs and fiction programs

49. SARTEC and the UDA proposed that the Commission increase VRAK.TV's current requirements regarding original first-run Canadian programming and amend the definition of original first-run French-language programming to reflect Decision CRTC 2000-139, 4 May 2000, adding the concept of programming produced in French and deleting the following phrase: "distributed for the first time by a Canadian specialty or pay-TV service in a language other than the language in which it was originally distributed by another broadcaster." To that end, SARTEC and the UDA proposed that the Commission impose requirements for so-called fiction programming.
50. In light of the interveners' concerns, specifically the limited number of Canadian original first-run programs written and filmed in French by and for French-language broadcasters, the Commission is of the view that, to aid in promoting linguistic duality thereby achieving the objectives set out in section 3 of the *Broadcasting Act* (the Act), it is essential that French-language television broadcasters contribute to the production of original programming in the service's first language, in this case, French.
51. The Commission further notes that, given the licensee's financial success and the now authorized advertising revenues, the licensee will be able to make a greater contribution to the Canadian broadcasting system, specifically to invest in Canadian original French-language programming.
52. Accordingly, in view of the interventions filed and in light of the preceding, the Commission considers that it would be in the interests of the broadcasting system and specifically in the interests of Francophone children and adolescents to amend VRAK.TV's current requirements with respect to Canadian original first-run programming such that the 104-hour requirement pertains to programs written and produced in French. In amending these requirements, the Commission does not believe that it is necessary or appropriate to require that the licensee also broadcast a minimum number of hours of Canadian original drama produced and written in French. The related **condition of licence** is amended accordingly and set out in the appendix to this decision.

Dubbing

53. The Commission notes Astral's statement that its dubbing policy is the same for all the specialty services that it operates. Each time an Astral station pays for dubbing a program produced in a language other than French, it has the dubbing done in Canada by a Canadian company. The Commission expects Astral to continue to comply with this policy.
54. Furthermore, as proposed by Astral in response to the UDA's concerns, the Commission expects the licensee to respect the following additional commitment:

For any Canadian program produced in a language other than French that it acquires or in which it is involved at the financing stage, the licensee shall:

- indicate to the producer or distributor its clear preference for a version dubbed in French in Canada; and
- inform the producer or distributor, in detail, of the benefits of Telefilm Canada's dubbing assistance fund and the Quebec government's tax relief program credits for dubbing.

Regional reflection and independent production

55. Section 3(1)(i)(v) of 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.
56. The Commission notes the steps taken by VRAK.TV to reflect the various regions of Quebec and the efforts made to portray the various regions of Canada outside Quebec in its programming.
57. 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, the Commission expects the licensee to ensure that the programming aired by VRAK.TV continues to be reflective of all of Canada's regions, and that producers from outside the major production centres have the opportunity to produce programming for this service.

Reflection and portrayal of diversity

58. 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.

59. 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 the presence and portrayal of cultural diversity.
60. 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.

Employment equity and on-air presence

61. 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.
62. 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.
63. In this regard, the licensee stated that it does not have any on-air employees. However, the Commission expects VRAK.TV to give high priority to representing members of the four designated groups in its original productions.

Service to persons who are deaf or hard of hearing

64. 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.
65. 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, in accordance with the Commission's position as set out in several previous decisions, the Commission notes that it is now appropriate to require French-language broadcasters to close caption the same percentage of programming as their English-language counterparts, particularly given that the Commission advised the licensee at its last

licence renewal that it would encourage it to explore, by the end of its licence term, mechanisms for captioning 90% of all the programming it broadcasts during the broadcast day.

66. In response to additional questions asked in the context of its licence renewal application, the licensee stated that it was prepared to make a commitment to a graduated increase in the percentage of all its programming that will be closed captioned, starting at 55% in the first year and achieving 90% in the fourth year of its new licence term, with the exception of programming targeting a preschool audience.
67. As set out in *Treehouse TV – Licence renewal*, Broadcasting Decision CRTC 2004-27, 21 January 2004, the Commission expressed the view that the captioning of preschool programming is important, in part to ensure that parents are able to access the programming their children watch. The Commission notes that older children would also benefit. Furthermore, the Commission considers that the provision of an increased level of closed captioning earlier in the licence term would not represent an undue financial hardship for VRAK.TV.
68. In consideration of the licensee's arguments and profitability, the Commission **denies** the licensee's request to exempt programming targeting a preschool audience from the closed captioning requirement. The Commission therefore expects the licensee to increase its level of closed captioning and directs the licensee, by **condition of licence**, to provide closed captioning for 55% of all programming (including programming targeting a preschool audience) beginning the first year of the new licence term, and to gradually increase this percentage to 90% of all programs aired during the broadcast day, beginning no later than 1 September 2010, in accordance with the licensee's commitment. This condition of licence is set out in the appendix to this decision.
69. 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 continues to meet their needs.

Service to persons who are blind or whose vision is impaired

70. 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 setting described video obligations for specialty services, 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.
71. 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 who provide programs for VRAK-TV 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.

72. Consistent with the Commission's approach for services offering drama-based programming 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, as proposed by the licensee, that the licensee provide a minimum of two hours of described video programming each week, beginning in the second year of the new licence term, and increasing to three hours in the fourth year and to four hours in the sixth year. A **condition of licence** to this effect is set out in the appendix to this decision. For the purposes of this condition, a minimum of 50% of the required hours must be original to the service.

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

73. 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 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.
74. 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

75. 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 2006-382

Conditions of licence

1. a) The licensee shall provide a national French-language specialty programming service targeting Francophone children and youth of all ages up to 17 years of age.
- b) The programming provided by the licensee shall be dedicated exclusively to programs drawn from the following categories as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 1. News
 2. a) Analysis and interpretation
b) Long-form documentary
 3. Reporting and actualities
 4. Religion
 5. a) Formal education and preschool
b) Informal education/Recreation and leisure
 7. Drama and comedy
 - a) On-going dramatic series
 - b) On-going comedy series (sitcoms)
 - c) Specials, mini-series, and made-for-TV feature films
 - d) Theatrical feature films aired on TV
 - e) Animated television programs and films
 - f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - g) Other dramas
 8. a) Music and dance other than music video programs or clips
b) Music videoclips
c) Music video programs
 9. Variety
 10. Game shows
 11. General entertainment and human interest
 12. Interstitials
 13. Public service announcements
 14. Infomercials, promotional and corporate videos
2. 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 60% of the evening broadcast period.
3. In each broadcast year, the licensee shall distribute not less than 104 hours of original first-run Canadian French-language programs. For the purposes of this condition, an original first-run Canadian French-language program means:

- a Canadian program produced in French that will be distributed for the first time by the licensee and has never before been distributed by the licensee of any other broadcasting undertaking;

or

- a Canadian program produced in French and acquired at the pre-production stage that has previously been exhibited by a discretionary service (pay or pay-per-view).

4. In each broadcast year of the licence term, the licensee shall provide a minimum of two (2) hours of described video programming each broadcast week beginning no later than 1 September 2007, at least three (3) hours beginning no later than 1 September 2009 and at least four (4) hours beginning no later than 1 September 2011. For the purposes of this condition, a minimum of 50% of the required hours must be original to the service.
5. 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:

In each broadcast year, the licensee shall incur expenses of not less than 41% of the annual gross revenues, derived from the operation of this service in the preceding year, on Canadian programming rights, development (including the script and pilot program development fund, training grants and funding expended on captioning for the hearing impaired) and promotion expenditures.

6. Effective 1 September 2006, the licensee shall charge each exhibitor of this service a maximum wholesale rate of \$0.60 per subscriber per month, where the service is distributed as part of the basic service.
7. The licensee shall provide closed captioning for 55% of all programming beginning the first year of the new licence term, and gradually increase this percentage to 90% of all programs aired during the broadcast day, beginning no later than 1 September 2010.
8. a) Subject to subsection b), the licensee shall distribute not more than twelve (12) minutes of advertising material during each clock hour.

- b) The licensee shall not distribute commercial messages during any program that has as its main target audience children up to 5 years of age.
 - c) The licensee shall not distribute any advertising material other than national advertising.
9. 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).
 10. 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.
 11. 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:

all time periods shall be calculated according to Eastern standard time.

“broadcast day” means the period of up to 18 consecutive hours beginning each day no earlier than six o'clock in the morning and ending no later than one o'clock in the morning of the following day, as selected by the licensee and approved by the Commission.

“broadcast year,” “evening broadcast period” and “clock hour” shall have the same meaning as set out in the *Television Broadcasting Regulations, 1987*.

“broadcast week” shall have the same meaning as set out in the *Radio Regulations, 1986*.

“paid national advertising” shall mean advertising material, as defined in the *Specialty Services Regulations, 1990*, that is purchased at a national rate and receives national distribution on the service.