



Broadcasting Decision CRTC 2009-410

Route reference: 2009-113

Additional references: 2009-70, 2009-70-1, 2009-70-2, 2009-113-1, 2009-113-2, 2009-279

Ottawa, 6 July 2009

TVA Group Inc.
Across Canada

*The application numbers are set out in this decision.
Public Hearing in the National Capital Region
27 April 2009*

Licence renewals

*The Commission **renews** the broadcasting licences for the French-language national television network TVA and the French-language television programming undertakings CFTM-TV Montréal, CFCM-TV Québec, CHEM-TV Trois-Rivières, CJPM-TV Saguenay, CHLT-TV Sherbrooke and CFER-TV Rimouski from 1 September 2009 to 31 August 2011. This short-term renewal will allow the Commission to consider the next renewal for the licences issued to TVA Group Inc. at the same time as it examines the licence requirements for TQS inc. and the renewal of the licences for the French-language television stations operated by the Canadian Broadcasting Corporation.*

*As set out in Broadcasting Regulatory Policy 2009-406, the Commission renews the licences subject to the same **conditions** set out in the current licences, with the addition of a **condition of licence** specific to the Québec station and a **condition of licence** specific to the Trois-Rivières, Saguenay, Sherbrooke and Rimouski stations relating to the broadcast of local programming.*

*Further, the Commission **extends** to 31 August 2011 the deadline to commence the operation of the transitional digital television programming undertaking CFTM-DT Montréal, Quebec.*

Introduction

1. In Broadcasting Notice of Consultation 2009-113, the Commission announced that it would hold a public hearing commencing 27 April 2009 to consider various applications for licence renewal for conventional television programming undertakings. In Broadcasting Notice of Consultation 2009-70, the Commission indicated that it would be predisposed to issue short-term licences and would focus on certain key issues, including changes to local, priority and independently-produced programming commitments. The Commission notes that as set out in Broadcasting Regulatory Policy 2009-406, also issued today, it is maintaining the priority programming condition of licence and associated expectation relating to independent production. The rationale for each is described in Broadcasting Regulatory Policy 2009-406.

2. In this context, the Commission received applications from TVA Group Inc. (TVA) to renew the licences for its network and for its stations CFTM-TV Montréal, CFCM-TV Québec, CHEM-TV Trois-Rivières, CJPM-TV Saguenay, CHLT-TV Sherbrooke and CFER-TV Rimouski, Quebec. TVA also asked the Commission to relieve it of most of its regulatory obligations with regard to contributions to Canadian programming, such as the obligations relating to priority programming hours and independent production, for the upcoming licence term. Further, TVA requested to extend to 31 August 2011 the deadline to commence the operation of the transitional digital television programming undertaking CFTM-DT Montréal.
3. In Broadcasting Decision 2009-279, the Commission announced that it would renew the licences for TVA's television stations for a term of two years in order to allow the Commission to examine these stations as part of a group-based licence renewal for TVA at the same time as it examines the licence obligations for TQS inc. (TQS) and the renewal of the licences for the French-language television stations operated by the Canadian Broadcasting Corporation (CBC). At the same time, the Commission will consider issues relating to priority programming and independent production, for which TVA already has commitments with respect to its programming schedule, in order to take into account the views of all interested parties, including those of TQS and the CBC.
4. The Commission notes that TVA serves almost 30% of the Quebec market with its TVA service alone, a much higher percentage than that served by the second most popular service in that market. This audience share exceeds 32% if all the specialty services owned by TVA are included.¹ The Commission is of the view that TVA has carved out a special place for itself and notes that TVA has maintained that position despite regulatory requirements, which do not seem to have impeded its growth. For these reasons, the Commission is not convinced that TVA needs to be relieved of most of its obligations for the two-year licence term granted.
5. In the context of this proceeding, the Commission received and examined interventions with respect to each application. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. After examining the applications in light of applicable regulations and policies, including the policy determinations announced in Broadcasting Regulatory Policy 2009-406, and taking into account the interventions received and the applicant's replies to the interventions, the Commission considers that the issues to be addressed in its determinations relate to:
 - non-compliance relating to closed captioning and video description;
 - local programming;

¹ BBM Canada Infosys – Report for the broadcast year beginning 27 August 2007 and ending 31 August 2008.

- programs based on foreign concepts;
- conditions for mandatory national distribution of TVA; and
- the broadcast of Canadian films.

Non-compliance relating to closed captioning and video description

7. The Commission notes that the licensee has admitted to not meeting its obligations relating to closed captioning for persons who are deaf or hard of hearing which were imposed as conditions of licence at the last renewals. Under these obligations, the licensee was required to provide closed captioning for all (100%) of its news programming and 90% of its total programming by the end of its licence term.
8. Although the licensee remains in a situation of non-compliance, the Commission notes the efforts TVA has made to increase the level of closed captioning on its network, as well as the recent increase in the percentage of closed captioned programs. The Commission maintains the **conditions of licence** to this effect for the new licence term. The Commission expects the licensee to abide by its conditions and Broadcasting Public Notice 2007-54 for the next licence term.
9. With respect to the broadcast of programs with video description, the Commission had expressed its expectations at the last licence renewal that the licensee broadcast four hours of content with video description by the end of its licence term. TVA outlined the technical difficulties that prevented it from broadcasting content with video description. The Commission notes the licensee's commitment to broadcast four hours of content with video description each week on each of its stations that broadcasts on a digital basis during the new licence term.

Local programming

10. As stated in Broadcasting Decision 2008-129, the Commission considers that "local news broadcasts represent a key element in establishing a station's identity and that local reflection is an indispensable requirement." From this perspective, the Commission studied the licensee's proposals for obligations relating to local programming for its local stations in Québec, Trois-Rivières, Sherbrooke, Saguenay and Rimouski.
11. In Broadcasting Decision 2004-530, when it last renewed the licences for the above stations, the Commission noted TVA's commitments to broadcast 21 hours of original local programming produced in Québec, as well as 3 hours and 10 minutes of original local programming for each of the stations in Trois-Rivières, Sherbrooke, Saguenay and Rimouski. Of the 21 hours produced in Québec, 9 hours were to consist exclusively of local interest programs, including at least 4 hours and 30 minutes of local news.
12. In its application, the licensee proposed to reduce the amount of programming produced in Québec to 18 hours per week and to maintain at 3 hours and 10 minutes per week the level of local programming on its other regional stations. According to the licensee, the reduced level of programming produced in Québec would be largely offset by increased reflection

of the city on all the platforms operated by Quebecor Media Inc., TVA's parent company. The Commission notes that the licensee made no commitment with regard to the number of hours of programming produced in Québec that would consist exclusively of local interest programming.

13. A number of interveners from the Québec region requested that the Commission not allow the licensee to reduce the number of hours of local programming on their local station. The interveners stated that the media situation in Québec – particularly with the major reduction in local news on the TQS network and the difficulties experienced by some local newspapers – made it imperative that the number of hours of local programming by TVA be maintained.
14. The Commission further notes the intervention by the Syndicat des employés de CFCM-TV (SECC), which indicated that the local programming produced in Québec is sometimes produced in collaboration with artists from Montréal who travel to Québec in order that the licensee may respect its commitments to local programming in that market. The SECC submitted that the programs broadcast on the network originate mostly from Montréal but include some insertions produced in Québec. The SECC noted that these programs are also counted as produced exclusively from Québec in order to meet the licensee's requirements.
15. In Public Notice 1999-97, the Commission stated the following:

[...] in the new television environment, there are sufficient market incentives to ensure that audiences will continue to receive a variety of local news without regulatory requirements. News programming is a key element in establishing a station's identity and loyalty with viewers and is generally profitable.

16. However, since the issuance of that public notice, the industry has undergone significant consolidations and large media companies—detached from the local communities they serve—now operate the majority of conventional television stations. Further, over the course of the current economic downturn, it has been observed that broadcasters are more likely to cut local programming, which can entail significant infrastructure costs. It is the Commission's view that diversity of voices and local reflection are equally as important as, if not more important than, other preoccupations of broadcasters and that such considerations and the public demand for local programming are currently not being appropriately recognized by many within the industry. These two elements are important objectives mandated by the *Broadcasting Act* and the Commission needs to ensure that they are supported by the broadcasting system.
17. As stated in Broadcasting Notice of Consultation 2009-70, the Commission is prepared to consider appropriate obligations for local programming for a short-term licence. The Commission is confident that in order to maintain its significant market share, the licensee will continue to meet its audience's expectations and reflect the reality of the community it serves despite a reduction in the local programming requirement for the Québec station to 18 hours per week. The Commission expects however that the programs serving to meet this obligation originate entirely from the Québec market. In response to concerns voiced

by interveners from the community with regard to the “Montrealization” of programming and of news programs in particular, the Commission will continue to require that of the 18 hours, 9 hours per week consist exclusively of programs targeting the Québec market.

18. *The Broadcasting Act* (the Act) recognizes that “English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements.” The Commission therefore concludes that TVA, the country’s largest multi-station French-language ownership group should operate under different requirements than those for English-language television stations.
19. Since Québec is the province’s second largest television market as well as its capital, the Commission **approves** TVA’s request and imposes a **condition of licence** relating to the broadcast of local programming, as set out below. The Commission will review this condition of licence at the time of the next licence renewal.
20. Furthermore, the Commission reminds the licensee that as stated in Broadcasting Regulatory Policy 2009-406, it expects all local programming produced by a station, whether it consists exclusively of local interest programming or of national network programming, to reflect the reality of its original market. The Commission will assess, in the context of the 2011 hearing, the response of the communities with respect to their reflection in the local programming broadcast in their respective markets, as well as on all the platforms operated by the licensee.
21. In Broadcasting Regulatory Policy 2009-406, the Commission set out its conclusions with regard to local programming from small markets such as Trois-Rivières, Sherbrooke, Saguenay and Rimouski. For the reasons detailed in that regulatory policy, the Commission sets obligations for broadcasting local programming at 5 hours per broadcast week for each of these stations. The Commission is imposing **conditions of licence** to this effect.
22. The Commission notes that the number of hours for local programming being imposed is greater than the number of hours of local programming currently broadcast by the licensee in those markets. The Commission notes that the licensee will receive a large contribution from the Local Programming Improvement Fund that will allow it to focus on local programming in those small markets.

Programs based on foreign concepts

23. The Commission notes that TVA broadcasts a significant amount of Canadian programming and applauds that fact. However, the Commission notes that for several years TVA has been broadcasting programs based on foreign concepts and produced in-house or by independent Canadian producers. These include the popular programs *Star Académie*, *Le Banquier*, *Le Cercle* and *La Classe de cinquième*. The Commission notes that other conventional French-language broadcasters are also taking part in this trend, including the CBC (*Tout le monde en parle*, *Pyramide*) and TQS (*Wipeout*, *Le mur*, *Call TV*).

24. The Commission is concerned by this growing trend is to the detriment of the development of creative Canadian and Quebec talent. The Commission intends to discuss the issue at the 2011 public hearing.

Conditions for mandatory national distribution of TVA

25. The TVA network benefits from a mandatory distribution order on the basic service under section 9(1)(h) of the Act. The order was granted in Decision 98-488. This decision sets out a series of obligations—in the form of conditions of licence—with regard to Francophone communities outside Quebec. TVA is required to broadcast six special events per year reflecting the Francophone reality and experience outside Quebec and one weekly 30-minute program on Francophone life outside Quebec. The licensee must also reinvest 43% of the excess of its revenues over expenses related to the expanded distribution of its service outside Quebec in the improvement of programming focusing on Francophones outside Quebec and file reports attesting to these revenues.
26. In its application, the licensee proposed to replace these quantitative obligations with a more qualitative approach based on that adopted for cultural diversity. It also committed to hiring a journalist who would be based in western Canada and who would cover events of interest to Francophone Canadians.
27. The Fédération des communautés francophones et acadienne du Canada and the Alliance des producteurs francophones du Canada opposed to the removal of the licensee's quantitative obligations relating to Francophone communities outside Quebec. They stated that they were disappointed with the coverage of their reality on the TVA network and requested that the broadcaster's obligations be increased in this area.
28. The Commission is of the view that a discussion of the licensee's obligations with regard to Francophone communities outside Quebec would be more appropriate in the context of the broader hearing in 2011 to renew all the licences for the TVA and CBC conventional and specialty television services and review the obligations imposed on the TQS network. The Commission therefore maintains all **conditions of licence** relating to the national distribution of TVA for the licensee's new licence term. The Commission expects the licensee to consult representatives from these communities in order to implement a programming strategy that will allow it to reach its community reflection objectives in the programming of the network.
29. With regard to the hiring of a journalist assigned to cover Francophone events in western Canada, the Commission encourages the licensee to reflect as well as possible the reality of Francophones living outside Quebec. As suggested by On Screen Manitoba at the hearing, news coverage tends to report only "bad news." The Commission is of the view that a program like Via TVA reflects the reality of Francophones living outside Quebec more accurately. The Commission also considers that western Canada has become an important region with respect to development in Canada and a key element to understanding Canadian society as a whole. The Commission therefore encourages TVA to consider hiring a journalist assigned to cover events in western Canada, regardless of the fact that it is maintaining the obligations relating to the representation of Francophones outside Quebec.

30. The Commission recognizes that TVA incurs broadcast fees related to its national feed. The Commission is of the view that TVA may have a right to adequate compensation for its service. This issue will be considered as part of the public proceeding announced in Broadcasting Notice of Consultation 2009-411, also published today.

The broadcast of Canadian films

31. The Commission notes that the licensee did not respect the expectation set out by the Commission at the last licence renewal that the number of Canadian feature films broadcast on the TVA network, in the original French-language version or dubbed in French, increase in each year of the licence term. The licensee explained that the broadcast of Canadian and Quebec popular films has been made more difficult by the disappearance of tax credits from the Quebec government for the financing of feature films.
32. The Commission reiterates its expectation that TVA broadcast more Canadian films on its network but is conscious of the difficulties faced by TVA in acquiring rights to broadcast these films. The Commission intends to examine the issue of the broadcast of Canadian films in the Francophone market during the 2011 hearing.

Conclusion

33. The Commission **renews** the broadcasting licences for the French-language national television network TVA (application 2009-0226-4) and the French-language television programming undertakings listed below from 1 September 2009 to 31 August 2011.

Call sign	Location	Application number
CFER-TV and its transmitter CFER-TV-1	Rimouski Gaspé-Nord, Quebec	2009-0053-1
CHEM-TV	Trois-Rivières, Quebec	2009-0055-7
CJPM-TV and its transmitter CJPM-TV-1	Saguenay (Chicoutimi) Chambord, Quebec	2009-0056-5
CFCM-TV	Québec, Quebec	2009-0057-3
CFTM-TV	Montréal, Quebec	2009-0058-1
CHLT-TV	Sherbrooke, Quebec	2009-0059-9

34. The licence for each undertaking will be subject to the same conditions as those in effect under the current licence. In addition, the Commission imposes the following **condition of licence** on CFCM-TV Québec:
6. The licensee shall broadcast at least 18 hours of local programming in each broadcast week, 9 hours of which must focus exclusively on the local Québec market.

It also imposes the following **condition of licence** on CHEM-TV Trois-Rivières and CHLT-TV Sherbrooke, as well as CJPM-TV Saguenay and CFER-TV Rimouski and their respective transmitters:

6. The licensee shall broadcast at least five hours of local programming in each broadcast week.
35. As set out in Broadcasting Regulatory Policy 2009-406, the above-noted television stations will not be eligible to receive funding from the Local Programming Improvement Fund if they are not in compliance with this condition of licence.
36. The Commission reminds TVA that the above levels are only minimums and welcomes any additional local programming that it chooses to broadcast in the markets it serves. The Commission notes that it will re-examine these local programming levels in the context of the above-mentioned group-based renewals, at the same time as it renews the licences for the CBC and reviews the obligations of TQS, in order to ensure that these levels remain appropriate.
37. As regards CFTM-DT, the Commission notes that as this undertaking has not yet commenced operations, its licence has not been issued. The Commission **approves** the application by TVA Group Inc. (2009-0916-1) to extend the deadline to commence the operation of the transitional digital television programming undertaking CFTM-DT authorized in Broadcasting Decision 2006-78 to 31 August 2011. The Commission notes that this is the second extension granted for this undertaking.
38. The licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 31 August 2011, unless a request for an extension of time is approved by the Commission before this date. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date. The licence will expire 31 August 2011, the licence expiry date for CFTM-TV.

Employment equity

39. 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.

Secretary General

Related documents

- *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*, Broadcasting Notice of Consultation CRTC 2009-411, 6 July 2009
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009
- *Renewal of the broadcasting licences for private conventional television stations considered at the 27 April 2009 Gatineau public hearing – Initial decisions and scope of subsequent policy proceeding*, Broadcasting Decision CRTC 2009-279, 15 May 2009
- *Licence renewals for private conventional television stations*, Broadcasting Notice of Consultation CRTC 2009-113, 3 March 2009
- *Scope of licence renewal hearings for private conventional television stations*, Broadcasting Notice of Consultation CRTC 2009-70, 13 February 2009
- *Change in the effective control of TQS inc. and licence renewals of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke, CFRS-TV Saguenay and of the TQS network*, Broadcasting Decision CRTC 2008-129, 26 June 2008
- *Program log requirements for television programming undertakings*, Broadcasting Decision CRTC 2007-430, 21 December 2007
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *CFTM-TV Montréal – Transitional digital television*, Broadcasting Decision CRTC 2006-78, 15 March 2006
- *CFCM-TV Québec, CHEM-TV Trois-Rivières, CHLT-TV Sherbrooke, CFER-TV Rimouski and its transmitter CFER-TV-2 Gaspé-Nord, CJPM-TV Saguenay and its transmitter CJPM-TV-1 Chambord – Licence renewals*, Broadcasting Decision CRTC 2004-530, 3 December 2004

- *Licence renewals for the French-language national television network TVA and for the French-language television programming undertaking CFTM-TV Montréal*, Decision CRTC 2001-385, 5 July 2001
- *Building on Success – A Policy Framework for Canadian Television*, Public Notice CRTC 1999-97, 11 June 1999
- *National distribution of the French-language television service of TVA Group Inc.*, Decision CRTC 98-488, 29 October 1998

This decision is to be appended to each 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>.