



## Broadcasting Decision CRTC 2009-537

Route reference: 2009-425

Additional reference: 2009-425-1

Ottawa, 28 August 2009

### **2190015 Ontario Inc.**

Hamilton, London, Muskoka, North Bay, Ottawa, Sault Ste. Marie, Sudbury and Timmins, Ontario

*Applications 2009-1021-7 and 2009-1019-2, received 14 July 2009*

*Public Hearing in the National Capital Region*

*24 August 2009*

### **CHCH-TV Hamilton and its transmitters and CHCH-DT Hamilton – Acquisition of assets**

*The Commission **approves**, subject to certain conditions, applications by 2190015 Ontario Inc. for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership the assets of the English-language television stations CHCH-TV Hamilton along with its transmitters and the transitional digital television station CHCH-DT Hamilton and for broadcasting licences to continue the operation of the undertakings. The conditions of approval are set out in the appendices to this decision.*

*The Commission **renews** the broadcasting licences for CHCH-TV Hamilton until 31 August 2016 and for CHCH-DT Hamilton until 31 August 2011. The licences will be subject to the terms and **conditions** set out in the appendices to this decision.*

*Given the specific context of the renewals and the financial difficulties of the station, the Commission intends to re-evaluate issues related to the broadcast of local programming and priority programming at a public hearing to be held in 2012.*

### **Introduction**

1. The Commission received applications from 2190015 Ontario Inc. (the applicant), for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership (Canwest) the assets of the English-language television programming undertaking CHCH-TV Hamilton along with its transmitters CHCH-TV-1 Ottawa, CHCH-TV-2 London, CHCH-TV-3 Muskoka, CHCH-TV-4 Sudbury, CHCH-TV-5 Sault Ste. Marie, CHCH-TV-6 North Bay and CHCH-TV-7 Timmins and the transitional digital television programming undertaking CHCH-DT (commonly known as E! Ontario). The applicant also requested new broadcasting licences to continue the

operation of the undertakings until 31 August 2016.

2. With the exception of certain conditions of licence from which it requested relief, the applicant agreed to operate the undertakings under the terms and conditions of licence set out in Broadcasting Decisions 2001-458, 2001-458-4 and 2009-409. In its applications, the applicant also committed to include in the station's new programming schedule a substantial amount of local news and public affairs programming during the day while popular movies would dominate the evening hours.
3. The applicant is a corporation owned by 2185220 Ontario Limited (30% of the voting shares), a corporation equally owned by Christopher J. Fuoco and Kimberly S. Train, and by three other shareholders, namely Romen Podzyhun, Anthony D'Andrea and C.J. (Cal) Millar (respectively holding 23.4%, 23.3% and 23.3% of the voting shares).
4. The Commission also received applications from the 2209005 Ontario Inc. to acquire the ethnic television programming undertaking CJNT-TV Montréal. CJNT-TV is the subject of Broadcasting Decision 2009-536, also issued today. CHCH-TV, CHCH-DT and CJNT-TV are part of the same proposed transaction.
5. As part of this process, the Commission received and considered interventions with respect to the applications. The public record for this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and determinations**

6. After examining the applications in light of applicable regulations and policies and taking into account the interventions and the applicant's reply to the interventions, the Commission considers that the issues to be addressed in its determinations are the following:
  - proposed value of the transaction;
  - proposed tangible benefits package;
  - local programming;
  - proposed elimination of priority programming;
  - proposed removal of diversity of editorial voice safeguards;
  - closed captioning;
  - described video;
  - audio description; and

- digital transition.

#### **Proposed value of the transaction**

7. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.
8. The purchase price for the whole transaction (including the undertaking CJNT-TV Montréal), as set out in the purchase agreement, is \$12. The applicant estimated the value of the transaction based on the Commission's benefit guidelines to be equivalent to the commitments (as identified in its applications) to be assumed by the applicant. These commitments total not more than \$500,000.
9. After analyzing the financial information submitted, the Commission finds that the value of the transaction is negative.
10. In making its determination the Commission included the negative value of the working capital estimated as of the date of available financial statements (30 April 2009). The Commission also included the value of assumed leases. This value should have included the value of the co-siting agreement. However, this agreement will only be signed just before closing and its value is unknown at this time. Based on the value generally seen in similar agreements, the Commission is of the view that, even with the inclusion of this agreement, the value of the transaction would remain negative.

#### **Proposed tangible benefits**

11. As set out in Public Notice 1989-109 and reaffirmed in Public Notice 1993-68, in the absence of a competitive process, application of the benefits test remains the best method of ensuring that applications for transfer of control or ownership are the best possible proposals under the circumstances, and are beneficial to the public served by the undertakings and to the Canadian broadcasting system as a whole.
12. As indicated in Public Notice 1999-97, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of a transaction, as accepted by the Commission. Such benefits should be directed to the communities served and to the broadcasting system as a whole.
13. In the present case, the applicant has not proposed a tangible benefits package on the basis that the stations are facing financial difficulties and that the stations were slated to be closed by the current owner—Canwest—as a result of the stations' unprofitability. Instead, the applicant has offered a number of intangible benefits that would result from the transaction. These include continuing the employment of a substantial number of skilled professionals in broadcasting (i.e. no layoffs are planned), increasing diversity, refocusing the stations so they become self-supporting and converting the stations to operate on fully digital, high-definition platforms so that they are better positioned to compete in the future.

*Commission's determination*

14. The Commission notes that the value of the transaction is negative and therefore no tangible benefits are payable in the circumstances.

**Local programming**

15. In its intervention, CTVglobemedia Inc. (CTVgm) raised the concern that CHCH-TV could evolve into a Toronto-focused station contrary to its licence and that to maintain its access to the Local Programming Improvement Fund, CHCH-TV should broadcast local programming that targets the markets of Hamilton and the Niagara Peninsula.
16. The applicant confirmed in its reply that the local news programming on CHCH-TV would be directed towards the markets of Hamilton, Halton and the Niagara Peninsula.
17. The Commission recognizes the applicant's confirmation of the focus of CHCH-TV's local news programming, but is of the view that CTVgm raised legitimate concerns.
18. Accordingly, the following definition of local programming will be added to the condition of licence related to the broadcast of local programming:

For the purposes of meeting this condition of licence, local programming is defined as programming produced by the local station with local personnel or programming produced by locally based independent producers that reflects the particular needs and interests of the markets of Hamilton, Halton and the Niagara Peninsula.

19. The Commission commends the applicant for its proposed programming strategy that is based on broadcasting a high proportion of news and local programming daily and that would provide the communities of Hamilton, Halton and the Niagara Peninsula with local programming in excess of the seven hours required by condition of licence.

**Elimination of priority programming**

20. In its application, the applicant requested relief from certain conditions of licence imposed by the Commission on the broadcasting licence for CHCH-TV. Specifically, the applicant requested that the Commission delete, from the broadcasting licence, the following conditions related to the provision of priority Canadian programming:

*Condition imposed in Decision 2001-458*

1. a) The licensee must broadcast, at a minimum, in each broadcast year, an average of eight hours per week of Canadian programs in the priority program categories between 7 p.m. and 11 p.m., from Monday to Sunday. As defined in Public Notice 1999-205, the priority program categories are:

Canadian drama programs; Canadian music and dance and variety programs;

Canadian long-form documentaries; Canadian regionally-produced programs in all categories other than News and information and Sports; Canadian entertainment magazine programs.

b) For the purpose of fulfilling the above-noted condition, the licensee may claim the new dramatic programming credit set out in Public Notice CRTC 1999-205, as may be amended from time to time.

*Condition imposed in Decision 2001-458-4*

4. b) In accordance with Decision CRTC 2000-228, the licensee shall broadcast, at a minimum, in each broadcast year, an average of 8 hours per week of Canadian programs in the priority program categories between 7 p.m. and 11 p.m. which are wholly separate and distinct from the eight hours of priority programming to be broadcast on CIII-TV.

For the purpose of this condition, the priority program categories are as follows: Canadian drama programs (category 7); Canadian music and dance (category 8a) and variety programs (category 9); Canadian long-form documentaries (category 2b); Canadian regionally-produced programs in all categories other than News and information (categories 1, 2 and 3) and Sports (category 6); Canadian entertainment magazine programs.

c) For the purpose of fulfilling the above-noted condition, the licensee may claim the new dramatic programming credit set out in Public Notice CRTC 1999-205, as may be amended from time to time.

The licensee is no longer entitled to claim the dramatic programming credit set out in the appendix to Public Notice CRTC 1984-94 and appendices I and II to Public Notice CRTC 2000-42.

21. In its application, the applicant argued that the imposition of minimum levels of priority programming has historically been a condition of licence that has been applied only to the larger multi-station ownership groups and not to smaller multi-station owners such as itself.

*Interventions*

22. The majority of the interveners commented on the applicant's proposal to eliminate the requirement to broadcast Canadian priority programs. The Canadian Film and Television Production Association and the Writers Guild of Canada noted that, given its presence in Canada's largest television market, it would be inappropriate to completely relieve CHCH-TV from having to broadcast priority programming. They noted that the Commission recently required Sun TV Company (Sun TV) to broadcast an average of two hours of priority programming per week during peak viewing periods.

23. In its intervention, Illusions Entertainment Corporation stated that it opposed the elimination of a priority programming commitment for CHCH-TV. It argued that in the absence of any spending requirements for conventional television stations, a priority programming commitment would be the only guarantee for a viable production industry in Canada.

*Applicant's reply*

24. The applicant questioned the comparison being made between CHCH-TV and the Sun TV station in relation to their status as stand-alone stations. It noted that, although Sun TV may no longer be part of a multi-station group, it is owned by Quebecor Media Inc., a corporation with the financial ability to produce priority programming. It further noted that only large multi-station groups have been required to broadcast priority programming. It argued that CHCH-TV, as a stand-alone station, does not have the financial resources to acquire original priority programming.

*Commission's determination*

25. The Commission considers that it would not be appropriate to require the applicant to broadcast priority programming at this time given the current financial difficulties of the station. Accordingly, CHCH-TV is relieved of the conditions of licence relating to priority programming. However, the Commission expects the applicant to make best efforts to broadcast priority programming whenever possible. Furthermore, as discussed below, the Commission intends to re-evaluate the issue of the broadcast of Canadian priority programming by the applicant at a public hearing to be held in 2012.

**Proposed removal of diversity of editorial voice safeguards**

26. The applicant also proposed to delete the following condition of licence and commitment:

*Condition imposed in Decision 2001-458*

3. The licensee shall adhere to the provisions of the *Statement of Principles and Practices*, as set out in Appendix 1 to Decision CRTC 2001-458, including the establishment of an independent Monitoring Committee as set out in Appendix "A" to the *Statement of Principles and Practices*.

*Commitment set out in Decision 2001-458-4*

The Commission also notes the commitment made by the licensee regarding CHCH-TV, as set out in the same decision, that management of programming and of news at CHCH-TV shall be kept separate from that of its sister station, CIII-TV Paris.

27. The Commission notes that the above condition of licence and commitment were imposed on CHCH-TV as a result of Canwest's ownership of this station. The Commission considers that the rationale for imposing this condition and commitment would no longer exist following the transaction. Accordingly, the Commission **approves** the applicant's request to delete the above condition of licence and commitment.

### **Closed captioning**

28. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English-language and French-language broadcasters to caption 100% of their programs, with the exception of advertising and promos. Accordingly, the Commission requires the applicant to caption 100% of its English-language and French-language programs, beginning in the first year of the licence term. A **condition of licence** to this effect is set out in Appendix 1 to this decision. Further, when captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all programming aired during the overnight period.
29. Further, in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated that it intends to require television licensees to abide by certain conditions of licence relating to closed captioning at the time of their next licence renewal. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill these conditions immediately. Accordingly, the Commission requires the applicant, beginning in year 4 of its licence term:
- to ensure that all advertising, sponsorship messages and promos are closed captioned;
  - to adhere to the quality standards on closed captioning developed by the television industry's working groups, once approved by the Commission and as amended from time to time; and
  - to put in place a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.

A **condition of licence** to this effect is set out in Appendix 1 to this decision.

### **Described video**

30. The applicant proposed to delete the following conditions of licence relating to the provision of described video:

*Condition imposed in Decision 2001-458*

4a) The licensee shall broadcast in years 3 and 4 of the licence term an average of 3 hours per week of described Canadian priority programs from categories 7 (Drama) and 2b (Long-form documentary), between 7 p.m. and 11 p.m.

b) The licensee shall broadcast in year 5, and for the remainder of the licence term, an average of 4 hours per week of described Canadian priority programs from categories 7 (Drama) and 2b (Long-form documentary), between 7 p.m. and 11 p.m.

In fulfilling this condition, a minimum of 50% of the required hours must be original broadcasts. Further, the licensee may broadcast up to one hour per week of described children's programming at an appropriate children's viewing time.

*Condition imposed in Decision 2001-458-4*

6. In addition to the requirements of condition of licence number 4 set out in Appendix 2 to Decision CRTC 2001-458, the licensee shall broadcast in each of the first two years of the licence term an average of 2 hours per week of described Canadian priority programs from categories 7 (Drama) and 2b (Long-form documentary), between 7 p.m. and 11 p.m.

In fulfilling this condition, a minimum of 50% of the required hours must be original broadcasts. Further, the licensee may broadcast up to one hour per week of described children's programming at an appropriate children's viewing time.

31. The applicant submitted that the above-noted conditions of licence were only applicable to priority programming. Furthermore, it noted that the requirement to provide described programming is only imposed on stations owned by large ownership groups. However, the applicant stated that it would acquire described movies where it is possible to do so.
32. However, further to the Accessibility Policy, the Commission notes that the requirement to provide programming with described video is no longer limited to stations owned by large ownership groups or priority programming. The Commission is of the view that persons with disabilities should be able to access programming with described video from both the public and private sectors in French and English and that basic levels of described video should be available on a wide variety of services. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill a condition of licence related to the provision of described video immediately. Accordingly, the Commission relieves the applicant of the requirement to provide described video for the first three years of its licence term. Beginning in year 4 of its licence term, the applicant is required, by **condition of licence**, to provide an average of 4 hours per week of described programming, of which 50% must be original to the service. To fulfill this requirement, the described programming may be drawn from the following categories: 2(b) Long-form documentary; 7(a) Ongoing dramatic series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(g) Other drama; 9 Variety; and 11 General entertainment and human interest, as well as programming targeted to children.

**Audio description**

33. In the Accessibility Policy, the Commission stated that it intends to require television licensees to implement audio description by condition of licence at the time of their next licence renewal. However, the Commission recognizes that, given the current financial

status of the station, the applicant may not be in a position to fulfill a condition of licence related to the provision of audio description immediately. Accordingly, the Commission requires the applicant to provide audio description for all information programs, and for news programming in particular, beginning in year 4 of its licence term. A **condition of licence** to this effect is set out in Appendix 1 to this decision.

### **Digital transition**

34. The Commission notes that over the new licence term, CHCH-TV and its transmitters will have to cease transmission of analog television signals, unless they qualify for an exemption. Specifically, in Broadcasting Public Notice 2007-53, the Commission determined that most television licensees will be authorized to broadcast only digital over-the-air signals after 31 August 2011. Accordingly, the Commission is imposing a **condition of licence** to this effect.
35. The conditions of licence, commitment and expectations set out in Appendix 1 to this decision will remain in effect following the conversion from analog to digital. In the event that the conversion results in amendments to the conditions of licence, these amendments will be carried out accordingly. The Commission reminds the applicant that it must comply with the technical requirements of the Department of Industry over the entire licence term.
36. In addition, given that CHCH-DT is a transitional digital television programming undertaking, its licence will expire 31 August 2011. The Commission will inform the licensee of the post-digital transition licensing approach at a later date.

### **Conclusion**

37. In light of the above, the Commission **approves**, subject to certain conditions, the applications by 2190015 Ontario Inc. for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership the assets of the English-language television programming undertaking CHCH-TV Hamilton along with its transmitters CHCH-TV-1 Ottawa, CHCH-TV-2 London, CHCH-TV-3 Muskoka, CHCH-TV-4 Sudbury, CHCH-TV-5 Sault Ste. Marie, CHCH-TV-6 North Bay and CHCH-TV-7 Timmins and the transitional digital television programming undertaking CHCH-DT Hamilton and for broadcasting licences to continue the operation of the undertakings. The conditions of approval are set out in the appendices to this decision.
38. Upon surrender of the current licences issued to Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership, the Commission will issue new licences to 2190015 Ontario Inc.
39. The applicant requested a seven-year licence term for CHCH-TV from 1 September 2009 to 31 August 2016. It submitted that the licence term would be conditional on the applicant presenting itself at a public hearing in the spring of 2012 to discuss issues the Commission deems appropriate.

40. The Commission notes that a number of interveners have recommended that the applicant be granted a shorter licence term, or at a minimum, be called to a public hearing in 2012 as proposed by the applicant. They argued that adopting either one of these proposals would allow the Commission to address any licensing or other regulatory issues in a timely fashion.
41. The Commission acknowledges the programming-related concerns raised by interveners. It also notes the applicant's proposal that it be called to a public hearing in 2012 to review issues related to CHCH-TV's programming.
42. The Commission determines that a seven-year licence term is appropriate for CHCH-TV in this instance. As set out in Appendix 1 to this decision, this seven-year licence term is conditional on the applicant presenting itself at a public hearing to be held in 2012 when the Commission intends to re-evaluate issues related to the broadcast of local programming and priority programming. Accordingly, the licence for the English-language television programming undertaking CHCH-TV will expire 31 August 2016 and the licence for the transitional digital television programming undertaking CHCH-DT will expire 31 August 2011. The licences will be subject to the terms and **conditions** set out in the appendices to this decision.

### **Employment equity**

43. 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**

- *CJNT-TV Montréal – Acquisition of assets*, Broadcasting Decision CRTC 2009-536, 28 August 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- Notice of hearing, Broadcasting Notice of Consultation CRTC 2009-425, 17 July 2009
- *Licence renewals*, Broadcasting Decision CRTC 2009-409, 6 July 2009
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009

- *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
- *Licence renewal for CHCH-TV*, Decision CRTC 2001-458-4, 2 August 2001
- *Licence renewals for the television stations controlled by Global*, Decision CRTC 2001-458, 2 August 2001
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989

*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>.*

## **Appendix 1 to Broadcasting Decision CRTC 2009-537**

### **Conditions of approval, terms, conditions of licence, commitment and expectations for CHCH-TV Hamilton and its transmitters in Ottawa, London, Muskoka, Sudbury, Sault Ste. Marie, North Bay and Timmins**

#### **Conditions of approval**

1. The applicant shall file, before closing of the transaction, an attestation letter from the financial institution where the funds are held, confirming that the money has effectively been deposited in trust and stating to whom the funds can be released.
2. The applicant shall file, before closing of the transaction, a letter from the CIBC, BCH.CA Inc. or any other lender confirming approval of the loan facility.

#### **Terms**

The licence will be in effect from 1 September 2009 to 31 August 2016.

The expiry date is conditional on the licensee presenting itself at a hearing to be held in 2012 to discuss issues related to the broadcast of local programming and priority programming.

#### **Conditions of licence**

1. The licensee shall broadcast a minimum of seven hours of local programming per broadcast week.

For the purposes of meeting this condition of licence, *local programming* is defined as programming produced by the local station with local personnel or programming produced by locally based independent producers that reflects the particular needs and interests of the markets of Hamilton, Halton and the Niagara Peninsula.

2. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
3. The licensee shall adhere to the provisions of the Canadian Association of Broadcasters' *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.

4. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the *CAB Violence Code*, 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 is a member in good standing of the Canadian Broadcast Standards Council.
5. The licensee shall not affiliate with or disaffiliate from any network operator without the prior written approval of the Commission.
6. The undertaking shall be operated on the basis of the contours and particulars contained in the approved application.
7. The licensee shall caption 100% of the English- and French-language programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
8. The licensee shall, beginning in year 4 of its licence term:
  - ensure that all advertising, sponsorship messages and promos are closed captioned;
  - adhere to the quality standards on closed captioning developed by the television industry's working groups, once approved by the Commission and as amended from time to time; and
  - put in place a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.
9. The licensee shall broadcast, beginning in year 4 of its licence term, an average of 4 hours per week of described programming, of which 50% must be original to the service.
 

To fulfill this condition, the described programming may be drawn from the following categories: 2(b) Long-form documentary; 7(a) Ongoing dramatic series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(g) Other drama; 9 Variety; and 11 General entertainment and human interest, as well as programming targeted to children.
10. The licensee shall provide audio description for all information programs, and for news programming, beginning in year 4 of its licence term.
11. Unless otherwise authorized by the Commission, the licensee shall not transmit analog television signals after 31 August 2011.

## **Commitment**

The licensee will reintroduce a strong local orientation to CHCH-TV Hamilton.

## **Expectations**

The Commission expects the licensee to maintain a local presence, as established in *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009.

The Commission expects the licensee to make best efforts to broadcast priority programming whenever possible.

When captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all programming aired during the overnight period.

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

## **Appendix 2 to Broadcasting Decision CRTC 2009-537**

### **Conditions of approval, terms and conditions of licence for CHCH-TV Hamilton**

#### **Conditions of approval**

1. The applicant shall file, before closing of the transaction, an attestation letter from the financial institution where the funds are held, confirming that the money has effectively been deposited in trust and stating to whom the funds can be released.
2. The applicant shall file, before closing of the transaction, a letter from the CIBC, BCH.CA Inc. or any other lender confirming approval of the loan facility.

#### **Terms**

The licence will be in effect from 1 September 2009 to 31 August 2011.

#### **Conditions of licence**

1. The licence will be subject to the terms and conditions applicable to the analog television station CHCH-TV Hamilton, and as may be amended by the Commission.
2. The licensee shall ensure that all programming broadcast by the undertaking is a simulcast of the programming broadcast on CHCH-TV Hamilton, with the exception of up to 14 hours per week of unduplicated, supplementary programming.
3. The licensee shall ensure that at least 50% of the unduplicated, supplementary programming broadcast by the undertaking is Canadian.
4. The licensee shall ensure that all unduplicated, supplementary programming broadcast by the undertaking is broadcast in a wide screen (16:9 aspect ratio), high definition format.
5. The licensee shall ensure that all programs that are simulcast by the undertaking, and that are available to the licensee in a wide screen (16:9 aspect ratio) format, are also broadcast by the licensee in that format.
6. The licensee shall ensure that all programs that are simulcast by the undertaking during the evening broadcast period, and that are available to the licensee in high definition are also broadcast by the licensee in high definition.
7. The licensee shall ensure that the quality or quantity of high definition programming is not negatively affected by its transmission.