



Broadcasting Decision CRTC 2013-383

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Route reference: 2013-19

Additional references: 2013-19-1, 2013-19-3 and 2013-19-4

Ottawa, 8 August 2013

Aboriginal Peoples Television Network Incorporated Across Canada

Application 2012-0993-2, received 16 August 2012

Public hearing in the National Capital Region

23 April 2013

APTN – Licence renewal

*The Commission **renews** the broadcasting licence for the national, English- and French-language specialty Category A service APTN from 1 September 2013 to 31 August 2018. As the only television channel by and for Aboriginal peoples of Canada, APTN is exceptional in its contribution to Canadian expression, cultural sovereignty and regional reflection. It provides programming that is broadcast in both official languages and in 30 different Aboriginal languages and dialects, and that reflects the attitudes, opinions, ideas, values and artistic creativity of Aboriginal peoples, which would otherwise not be seen on television. Devoted to providing a positive window on Aboriginal life for all Canadians, APTN represents the only outlet for most of the independent Aboriginal production industry.*

*The Commission **denies** the licensee's requests relating to the provision of closed captioning and described video.*

*The terms and **conditions of licence** are set out in the appendix to this decision.*

The application

1. The Aboriginal Peoples Television Network Incorporated (APTN Inc.) filed an application to renew the broadcasting licence for its satellite-to-cable service APTN, which expires 31 August 2013.¹ The service provides programming that is broadcast in both official languages and in 30 different Aboriginal languages and dialects, and that reflects the attitudes, opinions, ideas, values and artistic creativity of Aboriginal peoples, which would otherwise not be seen on television.

¹ The licence for this undertaking was administratively renewed until 31 August 2013 as a result of Broadcasting Decision 2011-417.

2. The licensee also requested continued mandatory distribution of the service on the basic service of Canadian cable and satellite providers, pursuant to an order issued under section 9(1)(h) of the *Broadcasting Act* (the Act). This request was granted in Broadcasting Regulatory Policy 2013-372, also issued today.
3. The Commission received interventions supporting, opposing or commenting on the application. A large majority of the interventions were in support, including those from Aboriginal persons, organizations and production companies. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Background

4. APTN's main mission is to provide programming that reflects the lives, cultures and diverse perspectives of Aboriginal peoples, as well as a positive window on Aboriginal life for all Canadians, whether they live in northern or southern Canada. In the Commission's view, it is vitally important that this unique service, which is focussed on programming produced by and for Aboriginal peoples, be available to all Canadians, consistent with the objectives of the Canadian broadcasting policy.²
5. In furtherance of section 3(1)(d)(iii) of the Act, APTN serves the needs and interests, and reflects the circumstances and aspirations, of Canadian men, women and children. This includes equal rights, linguistic duality, the multicultural and multiracial nature of Canadian society, and the special place of Aboriginal peoples within that society. APTN also ensures, pursuant to section 3(1)(o) of the Act, that programming reflecting the Aboriginal cultures of Canada is provided within the Canadian broadcasting system as resources become available for that purpose.

Commission's analysis and decisions

6. After examining the application in light of applicable regulations and policies, the Commission considers that the issues to be addressed are the following:
 - a change in APTN's status to a specialty Category A service;
 - the provision of closed captioning and described video;
 - the provision of an attestation that certain conditions of licence are met;
 - independent production and reporting on independent production activity; and
 - a terms of trade agreement between APTN and the Alliance of Aboriginal Media Producers (AAMP).

² See Decision 99-42.

The designation of APTN as a specialty Category A service

7. The Commission notes that APTN is currently designated as a satellite-to-cable programming service. The licence for this type of service was first granted in the 1980s and was only rarely granted in limited circumstances. In light of recent changes to its licensing framework for specialty services, the Commission considers that APTN could be designated as a specialty Category A service going forward. While the licensee has indicated that it would prefer to remain a satellite-to-cable service, the Commission notes that this type of service is not recognized under many of its policies and various regulations, and that it could be advantageous for APTN to be converted to a specialty Category A service as these services benefit from certain protections not granted to satellite-to-cable licences. Consequently, APTN has agreed to be subject to the standard conditions of licence, expectations and encouragements for specialty Category A services as set out in the appendix to this decision.

Provision of closed captioning and described video

8. It has been the Commission's policy to impose requirements on licensees to close caption 100% of their programming (see Broadcasting Regulatory Policy 2007-54). APTN Inc. did not object to captioning English-language programming but requested that it be permitted to gradually ramp up to this requirement for French-language programming, by captioning 80% of programs broadcast over the broadcast day during the first year of the licence term, 90% during the second year, and 100% beginning in the third year. It stated that this is necessary since some French-language programming in its inventory is not closed captioned, as opposed to all new or commissioned programming, which is 100% closed captioned.
9. APTN Inc. further requested that it be permitted to maintain its current condition of licence relating to the provision of described video (condition of licence 10 of Appendix B to Broadcasting Decision 2005-445), rather than abide by the standard condition of licence applicable to specialty Category A services. This requirement is set out in condition of licence 7 of Appendix 1 to Broadcasting Decision 2011-443 and reads as follows:

If the service devotes 50% or more of its program schedule to programming drawn from program categories 7 Drama and comedy or 2(b) Long-form documentary, set out in item 6 of Schedule I to the *Specialty Service Regulations, 1990* (the Regulations), and/or to children's programming, the licensee shall provide described video for a minimum of four hours per broadcast week, of which two hours must be broadcast in described video for the first time on the service. The minimum four hours of described video programming broadcast during each broadcast week may be drawn from the following program categories, set out in item 6 of Schedule I to the Regulations: 2(b) Long-form documentary; 7 Drama and comedy; 9 Variety; 11(a) General entertainment and human interest; and 11(b) Reality television, and/or may be programming targeting children.

10. The licensee argued that while it would be able to meet the requirement to broadcast four hours of described programming per broadcast week, it would be unable to meet the refresh rate of two new hours per broadcast week as it does not currently commission a sufficient quantity of drama programming. APTN Inc. did clarify, however, that it would be able to adhere to the standard condition of licence by the third year of the new licence term if the Commission approves an increase in its wholesale fee. This issue is addressed in Broadcasting Regulatory Policy 2013-372.
11. The Commission considers that the industry has had over four years of notice during which to prepare for the new standard conditions of licence relating to accessibility.³ In the Commission's view, APTN Inc. did not provide sufficient evidence to support its request.
12. Accordingly, the Commission **denies** APTN Inc.'s requests in regard to both closed captioning and described video and finds that the licensee must abide by the standard conditions of licence.

Independent production and reporting on independent production activity

13. In the appendix to Broadcasting Decision 2005-445, the Commission set out the following condition of licence for APTN relating to programming produced by independent production companies:
 9. A minimum of 80% of programming broadcast by the licensee, other than news, current affairs and sports, shall be produced by independent production companies not related to the licensee.
14. During the proceeding, some producers expressed the concern that APTN counts productions from Animiki See, a company with which it is affiliated, in fulfillment of this requirement. Many requested that APTN file reports on this particular condition of licence.
15. In order to alleviate concerns expressed by interveners in regard to productions by affiliated companies, APTN Inc. agreed to add to that condition of licence the standard definition of "independent production company" used by the Commission for other licensees, which reads as follows:

An "independent production company" is defined as a Canadian company that is carrying on business in Canada with a Canadian business address, that is owned and controlled by Canadians, whose business is in the production of film, videotape or live programs for distribution, and in which the licensee and any company related to the licensee owns or controls, directly or indirectly in the aggregate, less than 30% of the equity.

³ New accessibility requirements were set out in Broadcasting Public Notice 2007-54, and in Broadcasting and Telecom Regulatory Policy 2009-430.

16. This definition has been added to condition of licence 8 in the appendix to this decision.
17. APTN Inc. further stated that it is willing to file an annual report with the Commission relating to its independent production activity that would include the following information:
- the name of the production for which APTN has entered into a new production commitment;
 - the name of the production company;
 - whether it is “related” (i.e., whether or not it meets the definition of an “independent production company”);
 - the region of production;
 - the length of production (episodes and program running time); and
 - the budget of production (to be filed in confidence with the Commission).
18. A **condition of licence** to that effect is set out in the appendix to this decision.

Attestation that certain conditions of licence are met

19. Currently, APTN is permitted to broadcast infomercials for which the duration exceeds the maximum 12 minutes of advertising per clock hour set out by condition of licence (see condition of licence 6 in the appendix to this decision). It will continue to be authorized to broadcast such infomercials over the next licence term. It is also currently required to broadcast an average of eight hours of programming per broadcast week, in the evening broadcast period, that is either drawn from certain programming categories or meets the definition of regional programming (see condition of licence 6 in the appendix to this decision). This requirement will also be maintained over the next licence term. The Commission notes that, during the current licence term, it has had recurring difficulties in monitoring these conditions of licence through program logs.
20. In order to address these recurring issues, APTN Inc. has agreed to have a senior officer of the corporation attest that the above-noted conditions of licence are met. A **condition of licence** to that effect is set out in the appendix to this decision.

Terms of trade agreement

21. The Commission has previously expressed the view⁴ that the establishment of terms of trade agreements between independent Canadian television programming producers and broadcasters provides stability and clarity for both producers and broadcasters and is in the broadcasting industry’s interest as a whole.

⁴ See Broadcasting Decision 2011-441.

22. APTN Inc. stated that it has initiated negotiations with AAMP and will work with it to reach a terms of trade agreement. In this regard, certain interveners requested that the licensee be required by condition of licence to reach a terms of trade agreement with the AAMP. APTN Inc. indicated that it did not support the imposition of a condition of licence to that effect.
23. The Commission notes that terms of trade negotiations have only started recently since AAMP is a new association of Aboriginal producers. Consequently, the Commission does not consider it appropriate to impose a condition of licence requiring APTN Inc. to adhere to a terms of trade agreement with the AAMP at this time. Nevertheless, it expects that an agreement will be signed between APTN Inc. and the AAMP before the end of the first year of the new licence term.

Conclusion

24. As noted above, in Broadcasting Regulatory Policy 2013-372, the Commission has approved the licensee's request for continued mandatory distribution. In that policy, the Commission decided that a five-year term for the distribution order was appropriate, given the pace of change in the Canadian broadcasting environment. The Commission considers that the licence term should coincide with that of the associated order.
25. Accordingly, the Commission **renews** the broadcasting licence for the national, English- and French-language specialty Category A service APTN from 1 September 2013 to 31 August 2018. The terms and **conditions of licence** are set out in the appendix to this decision.

Program logs

26. Section 10(3) of the *Speciality Service Regulations, 1990* states that except as otherwise provided under a condition of its licence, a licensee shall furnish to the Commission, within 30 days after the end of each month, the program log or machine-readable record of its programming for the month.
27. The Commission reminds APTN Inc. that according to these regulations, the logs shall at all times be kept in an acceptable form, which means that they must be accurate, exact and precise.
28. The Commission will provide an annual assessment of the licensee's compliance with its regulatory requirements. This evaluation will be sent to the licensee before the end of the broadcast year following the year being evaluated. This will allow the licensee to verify that it is in compliance with its requirements for the year being evaluated.
29. It is important that APTN Inc. ensure that its program logs are accurate throughout the year because the Commission will not re-evaluate the licensee's compliance for the year in question.

Secretary General

Related documents

- *Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act, Broadcasting Regulatory Policy CRTC 2013-372, 8 August 2013*
- *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011*
- *Group-based licence renewals for English-language television groups – Introductory decision, Broadcasting Decision CRTC 2011-441, 27 July 2011*
- *Administrative renewals, Broadcasting Decision CRTC 2011-417, 12 July 2011*
- *Accessibility of telecommunications and broadcasting services, Broadcasting and Telecom Regulatory policy CRTC 2009-430, 21 July 2009*
- *A new policy with respect to closed captioning, Broadcasting Public Notice CRTC 2007-54, 17 May 2007*
- *Aboriginal Peoples Television Network – Licence renewal, Broadcasting Decision CRTC 2005-445, 31 August 2005*
- *Decision CRTC 99-42, 22 February 1999*

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2013-383

Terms, conditions of licence and expectation for the national, English- and French-language specialty Category A service APTN

Terms

The licence will take effect 1 September 2013 and expire 31 August 2018.

Conditions of licence

1. The licensee shall adhere to the conditions of licence for specialty Category A services set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011, as amended from time to time.
2. The licensee shall provide a high-quality, general-interest television service offering a broad range of programming that reflects the diverse perspectives of Aboriginal peoples, their lives and their cultures. The service will provide a positive window on Aboriginal life for all Canadians, whether living in northern or southern Canada. The schedule will include programming in English, French and various Aboriginal languages.
3. The licensee shall devote at least 75% of the broadcast year and at least 75% of the evening broadcast period to the broadcast of Canadian programs.
4. The licensee shall broadcast a minimum of 35 hours of programming in Aboriginal languages in each broadcast week.
5. The licensee shall broadcast a minimum of 20 hours of French-language programming in each broadcast week.
6. In addition to the 12 minutes of advertising material permitted by subparagraph a) to condition of licence 8 set out in *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011, as amended from time to time, the licensee may broadcast infomercials (program category 14 set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*).
7. The licensee shall broadcast at a minimum, an average of eight hours of Canadian programs between 7 p.m. and 11 p.m. in each broadcast week that are drawn from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*: 2(b) Long-form documentary, 7 Drama and comedy, 8(a) Music and dance, 9 Variety and 11(a) General entertainment and human interest, or that are Canadian regional productions.

For the purpose of this condition of licence, “regional production” shall have the meaning set out in *Group-based licence renewals for English-language television groups – Introductory decision*, Broadcasting Decision CRTC 2011-441, 27 July 2011.

8. At least 80% of the programming broadcast on the service, other than news (program category 1), current affairs (program categories 2(a) and 3) and sports (program category 6) (see Item 6 of Schedule I to the *Specialty Services Regulations, 1990*), shall be produced by independent production companies not related to the licensee. An “independent production company” is defined as a Canadian company that is carrying on business in Canada with a Canadian business address, that is owned and controlled by Canadians, whose business is in the production of film, videotape or live programs for distribution, and in which the licensee and any company related to the licensee owns or controls, directly or indirectly in the aggregate, less than 30% of the equity.
9. The licensee shall have an adequate number of members on its Board of Directors, to represent northern and southern Canada, and at least one member who is selected by the Aboriginal broadcasting societies that make up the Northern Native Broadcast Access Program.
10. The licensee shall file, by no later than 30 November in each year, a report signed by a senior officer of the corporation attesting that APTN has met the requirements set out in conditions of licence 5 and 6 above, as well as the requirement relating to the closed captioning of the English- and French-language programs during the previous broadcast year. This report shall include the following information:
 - weekly amount (time) of programming broadcast in Aboriginal languages;
 - weekly and annual amount of French-language programming broadcast;
 - annual amount of English-language programming broadcast;
 - annual amount of closed captioning of the French-language and the English-language programming broadcast.
11. The licensee shall file, by no later than 30 November in each year, a report relating to its independent production activity that shall include:
 - the name of the production for which APTN has entered into a new production commitment;
 - the name of the production company;
 - whether it is “related”;
 - the region of production;
 - the length of production (episodes and program running time); and
 - the budget of production (to be filed in confidence with the Commission)

12. The broadcasting undertaking licensed hereby is designated as a Category A service.

For the purposes of these conditions of licence:

- All time periods shall be calculated according to Eastern Standard Time. Further, the terms “broadcast year” and “evening broadcast period” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*.
- “Paid national advertising” shall mean advertising material as defined under the *Television Broadcasting Regulations, 1987*, and that is purchased at a national rate and receives national distribution on the service.
- The term “broadcast week” shall have the same meaning as that set out in the *Radio Regulations, 1990*.

Expectation

The Commission expects the licensee to sign a terms of trade agreement with the Alliance of Aboriginal Media Producers before the end of the first year of the licence term.