



## Broadcasting Decision CRTC 2014-397

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Route reference: 2014-151

Ottawa, 30 July 2014

**NMTV inc.**  
Across Canada

*Application 2012-1093-9, received 30 August 2012*

### **Nuevo Mundo Television – Licence renewal and amendment**

*The Commission **renews** the broadcasting licence for the national, third-language, general interest, ethnic specialty Category B service Nuevo Mundo Television from 1 September 2014 to 31 August 2015. This short-term renewal will allow for an earlier review of the licensee's compliance with the Specialty Services Regulations, 1990 and its conditions of licence.*

*The Commission **denies** the licensee's request to be relieved from the requirement to control the loudness of commercial messages.*

#### **Introduction**

1. NMTV inc. (NMTV) filed an application to renew the broadcasting licence for the national, third-language, general interest, ethnic specialty Category B<sup>1</sup> service Nuevo Mundo Television, which expires 31 August 2014. The Commission did not receive any interventions regarding this application.
2. The licensee confirmed that it would adhere to the standard conditions of licence for specialty Category B services set out in Broadcasting Regulatory Policy 2010-786-1. Aside from the changes resulting from the imposition of these conditions of licence, NMTV proposed to operate the service under the conditions in effect under the current licence. However, it requested to be relieved from the requirement to control the loudness of commercial messages set out in section 13 of the *Specialty Services Regulations, 1990* (the Regulations).
3. In Broadcasting Notice of Consultation 2014-151, the Commission noted that changes in the ownership and control of NMTV had occurred without the Commission's prior approval, which is required under section 10(4) of the Regulations. The Commission also noted that the licensee was in apparent non-compliance with the requirements relating to the submission of program logs, the filing of annual returns (for broadcast

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<sup>1</sup> Services previously licensed as Category 2 specialty program undertakings are now renewed as specialty Category B services (see Broadcasting Public Notice 2008-100).

years 2010-2011 and 2011-2012) and the control of the loudness of commercial messages set out in sections 7(1), 7(2), 7(3), 7(4), 8(1) and 13 of the Regulations.

4. The Commission stated that it would examine these issues and determine if regulatory measures should be taken to rectify the situation, such as new conditions of licence of licence or a shorter licence term.

## **Non-compliance**

### **Submission of program logs**

5. Section 7(1) of the Regulations states that, except as otherwise provided under a condition of its licence, a licensee shall keep a program log or machine-readable record of its programming in a form acceptable to the Commission, which means that the log must be accurate and precise. Section 7(2) of the Regulations specifies that a licensee shall furnish such logs to the Commission within 30 days after the end of each month.
6. The Commission notes that an analysis of the television logs submitted by NMTV for the broadcast years 2007-2008 through 2011-2012 and for the 2013-2014 broadcast year revealed a significant number of errors and that no television logs were submitted by the licensee for the 2012-2013 broadcast year and between September and November 2013.
7. NMTV explained that the poor quality of the television logs was due to the fact that the lease contract for the software did not provide for training in how to correct errors and that in any case training was available only in English, whereas its staff spoke Spanish. The licensee also noted that it lacked experienced staff. NMTV provided no explanation for the missing logs other than a lack of staff.
8. The submission of accurate program logs enables the Commission to conduct an analysis of a licensee's programming to verify compliance with the Regulations and its conditions of licence. The maintaining of logs also enables the Commission to investigate a station's programming in the case of complaints. Accordingly, the Commission considers any breach of these obligations a serious matter.
9. The information gaps described above made it impossible for the Commission to evaluate the licensee's compliance with the Regulations and its conditions of licence. As a result, the Commission finds the licensee in non-compliance with section 7(1) of the Regulations for the broadcast years 2007-2008 through 2011-2012 and the 2013-2014 broadcast year, as well as with section 7(2) of the Regulations for the 2012-2013 broadcast year and between September and November 2013.
10. The Commission considers that the consistently high number of errors in the above-noted television logs, the repeated failure to file such logs over an extended period and the lack of improvement or implementation of corrective measures to address the issue make the level of non-compliance with these requirements very severe.

11. To assist the licensee in progressing promptly towards compliance with these requirements, the Commission has set out a **condition of licence** in the appendix to this decision requiring the licensee to submit a status report once every two months starting 1 September 2014 for the duration of the next licence term. The report must detail the concrete steps the licensee has taken to ensure that the television logs for its service are accurate, precise and free of errors. This measure will allow Commission staff to provide regular feedback to the licensee on its progress and ensure that it promptly complies with the requirements in the next licence term. It will also allow the Commission to evaluate the licensee's compliance with the Regulations and its conditions of licence based on the television logs submitted.

#### **Filing of annual returns**

12. Section 8(1) of the Regulations requires licensees to file an annual return by 30 November of each year for the broadcast year ending the previous 31 August.
13. NMTV filed its annual returns for the 2010-2011 and 2011-2012 broadcast years a few months after the 30 November deadline. The licensee acknowledged its lack of oversight and stated that it had since put in place governance provisions to ensure future compliance.
14. In light of the preceding, the Commission finds the licensee in non-compliance with section 8(1) of the Regulations for the 2010-2011 and 2011-2012 broadcast years. However, the Commission is satisfied with the licensee's commitment to respect the deadline in the future and its implementation of governance rules to ensure ongoing compliance with this requirement.

#### **Prior approval of changes in ownership and control**

15. Section 10(4) of the Regulations requires licensees to obtain the Commission's prior approval in respect of any act, agreement or transaction that directly or indirectly would result in a change in the effective control of an undertaking. It also requires licensees to obtain prior approval for certain changes in ownership.
16. The Commission notes that NMTV submitted an application (2012-1267-0) to seek the Commission's approval for certain changes in ownership and control. The Commission approved these changes in a letter dated 7 February 2014. The Commission reminds the licensee of its obligation to submit an application to seek Commission approval prior to any changes in ownership and control.

#### **Control of the loudness of commercial messages**

17. Section 13 of the Regulations requires licensees to ensure that every commercial message they broadcast complies with certain technical requirements relating to loudness, unless otherwise authorized by condition of licence.<sup>2</sup>

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<sup>2</sup> *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

18. In Broadcasting Information Bulletin 2012-471, the Commission directed broadcasters and television service providers to submit a report by 15 October 2012 confirming that certain steps had been taken to comply with these requirements. Given that NMTV did not submit the report by this deadline, Commission staff sent a reminder to the licensee requiring the report by 18 March 2013.
19. In its reply, the licensee stated that the broadcast of the service was undertaken by a subcontractor that had not put in place measures to ensure regulatory compliance. NMTV requested an exemption to the requirement due to its associated implementation costs.
20. The Commission considers that it is the licensee's responsibility to ensure that it is in regulatory compliance at all times and that it cannot delegate this responsibility to any other party. In this case, the Commission is of the view that NMTV did not make sufficient efforts to ensure its compliance with the above-noted requirement. Accordingly, the Commission finds the licensee in non-compliance with section 13 of the Regulations.
21. The Commission notes that it is its usual practice to deny grant requests to be relieved from a requirement where the licensee is in non-compliance with this requirement as in the present case. Further, in Broadcasting Regulatory Policy 2011-584, the Commission noted that the recommended practice for controlling the loudness of commercials was developed in 2009, that equipment was available to comply with this practice and that some broadcasters and television service providers had already taken steps to do so. The Commission also agreed with Canadians that the loudness of television commercials was an ongoing irritant and found that the cost of implementing the solutions was reasonable.
22. In light of the above, the Commission **denies** the licensee's request to be relieved from the requirement to control the loudness of commercial messages.
23. To ensure that the licensee complies with this requirement in the next licence term, the Commission requires NMTV to submit a report by no later than **6 months from the date of this decision** confirming that it is in compliance with the requirement to control the loudness of commercial messages and has put in place measures in that regard as set out in the Broadcasting Information Bulletin 2012-471. A **condition of licence** to this effect is set out in the appendix to this decision.

## **Conclusion**

24. Given the numerous instances and severity of non-compliance by the licensee over the current licence term, the Commission considers that a one-year licence renewal for the service would be appropriate. This short-term renewal will allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence. The Commission reminds the licensee that it must remain in compliance with regulatory requirements at all times. In the event that the licensee is unable or unwilling to do so, the Commission may choose to take other measures, including the

initiation of a mandatory order proceeding or the suspension, non-renewal or revocation of the licence.

25. Accordingly, the Commission **renews** the broadcasting licence for the national, third-language, general interest, ethnic specialty Category B service Nuevo Mundo Television from 1 September 2014 to 31 August 2015. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

### **Related documents**

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2014-151, 28 March 2014
- *Measures to control the loudness of commercial messages – Process for enforcing compliance by the broadcasting industry and addressing complaints*, Broadcasting Information Bulletin CRTC 2012-471, 30 August 2012
- *Measures to control the loudness of commercial messages*, Broadcasting Regulatory Policy CRTC 2011-584, 13 September 2011
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *Regulatory frameworks for broadcasting distribution services and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

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

## Appendix to Broadcasting Decision CRTC 2014-397

### Terms, conditions of licence, expectations and encouragements for the national, third-language, general interest, ethnic specialty Category B service Nuevo Mundo Television

#### Terms

The licence will expire 31 August 2015.

#### Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time, except for condition 7d), which will not apply, and condition 7a), which is replaced by the following:

Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than 12 minutes of advertising material during each clock hour, no more than 6 minutes of which may consist of local advertising.

For the purposes of this condition of licence, “local advertising” is advertising that does not fall within the definition of national and regional advertising, that is, advertising by persons who provide goods or services in more than one market or province.

2. With respect to the nature of service:
  - a) The licensee shall provide a national, third-language, general interest, ethnic specialty Category B service wholly devoted to reflecting the lifestyles and the needs of the Hispanic community of Canada, including programming dedicated to youth. The programming will be comprised of formal and informal educational programs designed to inform, educate and facilitate the integration of Hispanic persons into Canadian society, as well as cultural, Canadian variety and public affairs programs.
  - b) The programming shall be drawn exclusively from the following program categories set out in item 6 of 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
    - 5 (a) Formal education and pre-school  
(b) Informal education/Recreation and leisure
    - 7 (a) Ongoing dramatic series

- (b) Ongoing comedy series (sitcoms)
  - (c) Specials, mini-series or made-for-TV feature films
  - (d) Theatrical feature films aired on TV
  - (e) Animated television programs and films
  - 8 (b) Music video clips
  - (c) Music video programs
  - 9 Variety
  - 11 (a) General entertainment and human interest
  - (b) Reality television
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
- c) The licensee shall devote at least 90% of all programming broadcast during the broadcast week to programming in the Spanish language.
3. Beginning 1 September 2014, the licensee shall file a status report with the Commission once every two months for the duration of the licence term detailing the concrete steps it has taken to ensure that the television logs for its service are accurate, precise and free of errors.
4. The licensee shall file a report with the Commission by no later than **6 months from the date of this decision** confirming that it is in compliance with the requirement to control the loudness of commercial messages and has put measures in place in that regard as set out in *Measures to control the loudness of commercial messages – Process for enforcing compliance by the broadcasting industry and addressing complaints*, Broadcasting Information Bulletin CRTC 2012-471, 30 August 2012.

For the purposes of the conditions of this licence, “broadcast day” refers to the 24-hour period beginning each day at 6 a.m. or any other period approved by the Commission.

### **Expectations**

The standard expectations applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time.

### **Encouragements**

The standard encouragements applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time.

The Commission encourages the licensee to ensure that the portion of the service’s program schedule that is broadcast in the English and/or French languages serves to promote Canada’s linguistic duality.