



Broadcasting Decision CRTC 2018-290

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Reference: Part 1 licence renewal application posted on 27 November 2017

Ottawa, 17 August 2018

1490525 Ontario Inc.

Across Canada

Public record for this application: 2017-0820-8

Silver Screen Classics – Licence renewal

*The Commission **renews** the broadcasting licence for the English-language discretionary service Silver Screen Classics from 1 September 2018 to 31 August 2023.*

Application

1. 1490525 Ontario Inc. filed an application to renew the broadcasting licence for the English-language speciality Category B service Silver Screen Classics. The current licence expires 31 August 2018.
2. The licensee confirmed that its service would adhere to the standard requirements for discretionary services set out in Appendix 2 of Broadcasting Regulatory Policy 2016-436.
3. In addition, the licensee proposed to devote 5% of the previous year's revenues of the service to Canadian programming expenditures (CPE) in each broadcast year, consistent with its historical expenditures over the past three years. In support of its proposal, the licensee stated that it showcases feature films and programs from the 1940s-60s and that there is limited Canadian programming available to license from this era due to the maturity of the Canadian film and television industry at the time. It further noted that its service competes with out-of-market services, such as Turner Classic Movies, which have exponentially larger budgets for programming and marketing and access to classic content libraries within their own organizations. The licensee argued that an onerous CPE requirement would put it at a further competitive disadvantage.

Interventions and applicant's reply

4. The Commission received a joint intervention by the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and the Directors Guild of Canada (DGC), as well as comments by the Canadian Media Producers Association (CMPA), the Shaw Rocket Fund and the Writers Guild of Canada (WGC) and a joint intervention by Rogers Media Inc., Corus Entertainment Inc. and Bell Media Inc. (the Parties).

5. ACTRA and the DGC supported the renewal of the licence on the condition that the Commission impose a CPE requirement of 7% of previous year gross revenues for the service. These interveners argued that the era to which Silver Screen Classics is devoted includes a wide range of Canadian films and TV programs and that the service should make these available to Canadians as a priority.
6. Both the CMPA and the WGC also conditionally supported the renewal of the service. Specifically, they asked that Silver Screen Classics be subject to a minimum CPE requirement of 10% of previous year revenues. The WGC noted that when the Commission issued Broadcasting Regulatory Policy 2015-86, it was aware that a number of services had historical CPE levels below 10%, but nevertheless determined that a 10% CPE requirement would be the minimum for all services with more than 200,000 subscribers.
7. The WGC further noted that this determination was made in the context of other policy determinations granting broadcasters increased flexibility and reduced regulatory requirements and that the Commission chose to emphasize expenditure requirements as the primary regulatory tool to ensure that there is a place for Canadian programming within the Canadian broadcasting system. The CMPA noted that the Commission implemented this new CPE policy in tandem with reduced Canadian content exhibition requirements to emphasize the quality of programs produced by Canadians. Both therefore argued that it would be contrary to the letter and the spirit of that policy to make exceptions to the historical CPE requirement or to the 10% minimum CPE requirement for individual channels due to their historical spending or for other reasons.
8. For its part, the Shaw Rocket Fund stressed the continued need to support original Canadian children's programming
9. Finally, although the licensee did not request an exemption to the standard requirements for discretionary services, which include specific requirements regarding described video, the Parties used the opportunity to argue that the described video requirements imposed by the Commission on independently owned undertakings are onerous.
10. In response to the intervention by the Parties, the applicant submitted that large broadcast groups are able to amortize the cost of described video across all their services and often license non-Canadian content with described video delivered by the distributor. Therefore, it maintained that lower described video levels are more appropriate for independent or single-station broadcasters given the costs involved.
11. In response to the interveners' CPE requirement requests, the applicant argued that a CPE requirement greater than 5% will put it at a competitive disadvantage as its major competitor, the U.S.-based Turner Classic Movies, has no CPE requirements. In addition, it countered that the availability of older Canadian movie content is limited due to music rights issues, CAVCO certifications and other rights issues, as well as broadcast picture and sound quality degradation.

Commission's analysis and decisions

12. In Broadcasting Regulatory Policy 2015-86 (the Policy), the Commission announced that CPE requirements would be implemented for all English- and third-language discretionary services with over 200,000 subscribers based on historical levels. However, given the great variation in the revenues and expenditures of discretionary services and the fact that certain services make little or no expenditures on Canadian programming, the Commission also announced that the minimum CPE requirement to be applied at the next renewal of discretionary services would be set at 10% of previous year revenues of the service.
13. The Commission considers that the applicant has not demonstrated that the imposition of a 5% CPE requirement for its service is adequate. In this regard, the Commission notes that the applicant reported a CPE level of over 10% of previous year gross revenues in its annual returns for the past four years (2014-2017). This level of expenditures is consistent with the Commission's view expressed in the Policy that this CPE level represents an attainable floor for any discretionary service, as well as with section 3(1)(d), (e) and (f) of the *Broadcasting Act* (the Act) in that it will ensure an adequate contribution by the licensee to the creation and presentation of Canadian programming. Further, the Commission reminds the applicant that since the publication of the Policy and the elimination of genre exclusivity, services have the flexibility to broadcast different types of programming.
14. In view of the above, the Commission considers that a 10% CPE requirement is appropriate. Accordingly, in the appendix to this decision, the Commission has set out a **condition of licence** to that effect.

Other issues

Improved access by certain under-represented groups to the broadcasting system

15. The Commission considers it appropriate to adopt an incentive to encourage the reflection of Indigenous peoples within the Canadian broadcasting system. Specifically, the licensee will receive a 50% credit towards its CPE requirements for expenditures on Canadian programming produced by Indigenous producers, up to a maximum (expenses plus credit) of 10% of the licensee's overall CPE requirement when combined with the credit discussed below on official language minority community (OLMC) reflection. Only programming costs counting towards CPE as defined in Public Notice 1993-93 will be considered eligible for the credit.
16. The Commission is also of the view that a similar credit could encourage greater onscreen reflection of OLMCs in the Canadian broadcasting system. Consequently, the licensee will receive a 25% credit against its CPE requirements for expenditures on Canadian programming produced by OLMC producers, up to a maximum (expenses plus credit) of 10% of the licensee's overall CPE requirement when combined with the credit discussed in the preceding paragraph on Indigenous reflection. Once again, only programming costs counting towards CPE as defined in Public Notice 1993-93 will be considered eligible for the credit. Further, the OLMC

producer must be an independent producer as defined by the Commission and (i) if in the province of Quebec, the original language of the production must be English or (ii) if outside of the province of Quebec, the original language of the production must be French.

17. Accordingly, the Commission has set out a **condition of licence** to that effect in the appendix to this decision.

Conclusion

18. In light of all the above, the Commission **renews** the broadcasting licence for the English-language discretionary service Silver Screen Classics from 1 September 2018 to 31 August 2023. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

19. Section 8 of the *Discretionary Services Regulations* requires that except as otherwise provided under a condition of its licence, a licensee shall provide to the Commission, within 30 days after the end of each month, the program log or record of its programming for the month.

20. The Commission reminds the licensee that the program logs must be accurate and must be kept in a form acceptable to the Commission.

Secretary General

Related documents

- *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *The reporting of Canadian programming expenditures*, Public Notice CRTC 1993-93, 22 June 1993

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2018-290

Terms, conditions of licence, expectations and encouragements for the English-language discretionary service Silver Screen Classics

Terms

The licence will take effect 1 September 2018 and expire 31 August 2023.

Conditions of licence

1. The licensee shall adhere to the standard conditions of licence for discretionary services set out in Appendix 2 of *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. In each broadcast year, the licensee shall devote to the acquisition of or investment in Canadian programming at least 10% of the previous year's gross revenues of the undertaking.
3. Subject to condition 4, the licensee may claim, in addition to its expenditures on Canadian programming:
 - a. a 50% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year;
 - b. a 25% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an official language minority community producer and claimed as Canadian programming expenditures during that broadcast year. The licensee may claim the credit if:
 - i. the programming is produced in the province of Quebec and the original language of production is English; or
 - ii. the programming is produced outside the province of Quebec and the original language of production is French.
4. The licensee may claim the credits calculated in accordance with condition 3 until the expenditures made on Canadian programming produced by Indigenous producers and by official language minority community producers, including credits, reach a combined maximum of 10% of the Canadian programming expenditure requirement for the undertaking.
5. In regard to expenditures on Canadian programming:

- (a) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programming that is up to 5% less than the minimum required expenditure for that year calculated in accordance with condition of licence 2; in such case the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.
- (b) In each broadcast year of the licence term, excluding the final year, where the licensee expends an amount for that year on Canadian programming that is greater than the minimum required expenditure, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term.
- (c) Notwithstanding paragraphs (a) and (b) above, during the licence term, the licensee shall expend on Canadian programming, at a minimum, the total of the minimum required expenditures calculated in accordance with condition of licence 2.
6. In the two years following the end of the previous licence term, the licensee shall report and respond to any Commission enquiries relating to the expenditures on Canadian programming made by the licensee for that term.
7. The licensee is responsible for any failure to comply with the requirements relating to expenditures on Canadian programming that occurred during the previous licence term.

Definitions

For purposes of these conditions:

“Indigenous producer” means an individual who self-identifies as Indigenous, which includes First Nations, Métis or Inuit, and is a Canadian citizen or resides in Canada, or an independent production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and are Canadian citizens or reside in Canada. In regard to the definition of “independent production company,” “Canadian” includes a person who self-identifies as Indigenous and resides in Canada, whereas “Canadian company” includes a production company in which at least 51% of the controlling interest is held by one or more individuals who self-identify as Indigenous and reside in Canada.

“Official language minority community producer” means a company that meets the definition of “independent production company” and that:

- a. if operating in the province of Quebec, produces original English-language programming, or

- b. if operating outside of the province of Quebec, produces original French-language programming.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 2 of *Standard requirements for television stations, discretionary services and on demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 2 of *Standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.