



Broadcasting Decision CRTC 2018-302

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

Ottawa, 22 August 2018

Canal Évasion inc.
Across Canada

Public record for this application: 2017-0810-9

Évasion – Licence renewal

*The Commission **renews** the broadcasting licence for the French-language discretionary service Évasion from 1 September 2018 to 31 August 2023.*

Application

1. Canal Évasion inc. (Canal Évasion) filed an application to renew the broadcasting licence for the French-language specialty category A service Évasion, which expires 31 August 2018.
2. Canal Évasion confirmed that it would adhere to the standard requirements related to discretionary services set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436.
3. The Commission received comments regarding this application from the Shaw Rocket Fund and the Association québécoise de la production médiatique (AQPM). The licensee replied to AQPM's comments.

Commission's analysis and decisions

4. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are as follows:
 - Canadian programming expenditures (CPE);
 - instances of non-compliance; and
 - other issues.

Canadian programming expenditures

5. Canal Évasion requested that the CPE requirement be reduced from 46% to 32% of the broadcasting revenues from the previous year for Évasion.
6. Canal Évasion argued that this reduction is essential to its survival since, in accordance with the determinations set out in Broadcasting Regulatory Policy 2015-86, Évasion will lose its category A status at renewal. According to the applicant, the loss of this status will result in a decrease in the number of subscribers, when subscriber revenue makes up approximately 80% of its revenue.
7. Canal Évasion also submitted that its CPE level is much higher than that of the large French-language broadcast groups, which had their licences renewed in 2017. The licensee submitted that it is the only discretionary French-language service that does not benefit from being in an ownership group or from mandatory distribution on the basic service.
8. Lastly, Canal Évasion stated that it does not benefit from a large amount of support from the Canada Media Fund since the fund finances few of the types of shows that it broadcasts.

Intervention

9. AQPM asked that the Commission maintain the CPE requirement at 46%. It argued that the independent production market is weakened by the reductions in funding for Canadian French-language programs. AQPM noted that, even if the CPE threshold is maintained at 46%, the licensee's predicted decrease in its subscriber numbers due to the possible changes to its distribution would lead to a reduction to Évasion's CPE of close to 23% over the licence term. AQPM added that if the Commission were to approve Canal Évasion's request to reduce the CPE requirement to 32%, the dollar amount devoted to Canadian programming would be reduced by almost 46% during the same period, due to a multiplier effect. This would result in a reduction of nearly \$10 million over five years of the amounts devoted to the acquisition of or production of Canadian programs.

Canal Évasion's reply

10. Canal Évasion argued that its request is well-founded and that it provided the Commission with arguments to justify the request. It also added that the percentage imposed on the French-language channels in the Bell group is 35%, which is close to its request. Canal Évasion submitted that the rate of migration to other platforms is increasing.

Commission's analysis and decision

11. In paragraph 224 of Broadcasting Regulatory Policy 2015-86, the Commission announced that the CPE requirements would be established on a case-by-case basis, based on the percentage of historical expenditures.

12. The Commission concurs, as mentioned by the applicant, that Canal Évasion could be subject to a negative financial impact over the next licence term following the change in its distribution related to its category A¹ status and the loss of subscribers who migrate to digital platforms.
13. As was highlighted by AQPM, the Commission is of the view that the needs of the French-language market remain the same and that the value in dollars as it relates to the expenditure requirement will decrease even if the percentage requirement for the service is maintained. The Commission considers that the change in distribution for Évasion, combined with its high CPE requirement and the migration of subscribers to other platforms, justifies, in this particular case, some flexibility with respect to the CPE threshold. However, the Commission considers that the reduction from 46% to 32% requested is too large and not justified by the public record.
14. In light of all of the above, the Commission is of the view that a 40% CPE requirement for Évasion is appropriate. This threshold represents a balance between the needs of the French-language market to maintain an adequate level of production of Canadian programming, the service's historical expenditures, and the flexibility required so that it can adjust to the new regulatory framework. A **condition of licence** in this regard is set out in the appendix to this decision.
15. The Commission considers it appropriate to encourage the reflection of Indigenous peoples in 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 producer (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 section on Indigenous reflection. 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.

¹ In Broadcasting Regulatory Policy 2015-96, the Commission stated that access privileges for category A services would be eliminated at licence renewal for these services. This means that broadcasting distribution undertakings (BDUs) would no longer be required to distribute Évasion, which could have a negative impact on the rate that the service is able to negotiate with the BDUs.

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

Instances of non-compliance

Broadcasting of Canadian content

18. Canal Évasion is required by condition of licence to devote at least 50% of the broadcast day and at least 50% of the evening broadcast period to Canadian programs.
19. The reports submitted by Canal Évasion show that for the 2015-2016 broadcast year, the service did not devote the required percentage for the broadcast day and for the evening broadcast period to Canadian programs.
20. In response to questions on this matter, the licensee explained that its routing system did not calculate the credit related to Canadian dubbing. The licensee stated that it made changes to the software and submitted new reports to the Commission with levels meeting the requirements for both the broadcast day and the evening broadcast period.
21. The Commission is satisfied with Canal Évasion's response. Accordingly, the Commission finds that no action is required in this respect.

Closed captioning of programs and advertising

22. Canal Évasion did not adhere to the requirement to provide closed captioning for all of the programs broadcast on Évasion during the 2012-2013 and 2014-2015 broadcast years. Furthermore, it did not adhere to the closed captioning requirement for advertising during the 2015-2016 broadcast year.
23. The licensee explained that the percentage difference for closed captioning for the 2012-2013 and 2014-2015 broadcast years may be due to programs acquired prior to 2012 where the last cycle of the series occurred during those two years.
24. With regard to closed captioning of advertising for the 2015-2016 broadcast year, Canal Évasion stated that there was a problem with the routing system. It submitted a new report indicating that 100% of the advertising was closed captioned for the year in question.
25. The Commission is satisfied with the licensee's response and does not have any concerns that the licensee's commitments will not be met during the next licence term. The Commission considers that this minor instance of non-compliance is insufficient to justify regulatory measures.

Other issues

26. In its intervention, AQPM requested that the Commission impose a condition of licence requiring Évasion to devote a minimum of 75% of its CPE to original French-

language programs. AQPM argued that the proposed requirement would seek to guarantee that the licensee focus on the production of French-language Canadian content instead of dubbed English-language productions. AQPM is of the view that this requirement would ensure that Évasion contributes to the production of original French-language programming.

27. Canal Évasion opposed the request, but did not explain its reasons.
28. The Commission considers that imposing such a condition of licence is not necessary, as this would go beyond the requirements set out in the standard conditions of licence found in Appendix 2 to Broadcasting Regulatory Policy 2016-436. Indeed, there is no evidence on the public record indicating that the licensee used excessive levels of dubbed programs originally targeted at the English-language market, or that it intends to do so in the next licence term.
29. AQPM also asked that the percentage of the expenditures used to produce and acquire the rights to original Canadian programs devoted to programs produced by the licensee's shareholder corporations or affiliated companies be reduced from 45% to 25%.
30. AQPM argued that in 2003, the Commission approved Canal Évasion's request to increase the percentage due to financial difficulties resulting from the impact of the 11 September 2001 attacks on the travel industry—travel being the main subject matter of the service's programs. It claimed that the impact of the attack is no longer relevant and that the *Broadcasting Act* states that the programming offered must include a significant contribution from independent producers.
31. According to Canal Évasion, this request goes against the Commission's expectation to establish standard conditions of licence for all licensees, with the exception of the percentages for CPE and programs of national interest.
32. In Broadcasting Regulatory Policy 2015-86, the Commission eliminated the genre exclusivity policy and announced its intention to introduce standard requirements for discretionary services whenever possible. This approach aims to provide a more equitable regulatory framework for discretionary services. The Commission notes that AQPM's request goes above and beyond what is required within the new regulatory framework for discretionary services. Further, there is no evidence on the public record supporting the need to subject Canal Évasion to a more restrictive requirement that would limit its ability to make use of the services of affiliated undertakings.

Conclusion

33. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language discretionary service Évasion² from 1 September 2013 to 31 August 2023. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminders

34. Section 8 of the *Discretionary Services Regulations* requires that, among other things, 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.

35. 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: A world of choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy CRTC 2015-96, 19 March 2015
- *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.

² In Broadcasting Regulatory Policy 2015-86, the Commission announced that it would consolidate television programming service licences into three broadcasting categories. According to this simplified approach, specialty category A services are now designated as discretionary services.

Appendix to Broadcasting Decision CRTC 2018-302

Terms, conditions of licence, expectations and encouragements for the French-language discretionary service Évasion

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 40% 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.
8. The licensee shall spend no more than 45% of its annual budget for acquiring the rights to original Canadian programming on programs produced by companies that are shareholders of the licensee or its affiliated companies.

Definitions

For the 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.