



Broadcasting Decision CRTC 2018-327

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

Ottawa, 29 August 2018

New Tang Dynasty Television (Canada)

Across Canada

Public record for this application: 2017-0807-5

NTD Television – Licence renewal

*The Commission **renews** the broadcasting licence for the discretionary service NTD Television from 1 September 2018 to 31 August 2022.*

Application

1. New Tang Dynasty Television (Canada) (New Tang) filed an application to renew the broadcasting licence for the national, general interest third-language ethnic Category B service NTD Television. The current licence expires 31 August 2018.
2. The applicant confirmed that it would adhere to the standard requirements for discretionary services set out in Appendix 2 to Broadcasting Regulatory Policy 2016-436.
3. The applicant also proposed to adhere to a condition of licence requiring it to devote at least 45% of the previous year's gross annual revenues to the acquisition of and investment in Canadian programming for the service.

Interventions and replies

4. The Commission received an intervention in support from the Canadian Media Producers Association (CMPA). It also received a joint intervention filed by Rogers Media Inc., Corus Entertainment Inc. and Bell Media Inc. arguing that the described video requirements imposed on independently owned services are onerous.
5. The CMPA stated that the Commission should impose Canadian programming expenditure (CPE) requirements based on historical levels in accordance with the Broadcasting Regulatory Policy 2015-86. The CMPA argued that New Tang's CPE requirement for the new licence term should be reflective of the licensee's historical expenditures, which were over 50%.
6. In this regard, New Tang replied that it is committed to meeting any condition of licence regarding CPE levels established by the Commission.

7. In addition, New Tang stated that it shares the concerns of interveners regarding described video. Nevertheless, New Tang committed to establishing a Diversity Council to ensure compliance with the requirements for described video.

Commission's analysis and decisions

Canadian programming expenditures

8. In Broadcasting Regulatory Policy 2015-86, the Commission announced that CPE requirements would be implemented for all English- and third-language services with over 200,000 subscribers based on historical levels.
9. After reviewing the service's financial data, the Commission is of the view that 45% is a reasonable minimum CPE requirement given that New Tang's historical spending and revenues have fluctuated significantly from year to year during the current licence term. A **condition of licence** to that effect is set out in the appendix to this decision.
10. The Commission considers it appropriate to adopt an incentive to encourage the reflection of Indigenous peoples within the 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 regarding 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.
11. The Commission is also of the view that a similar credit could encourage greater onscreen reflection of OLMCs in the 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 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.
12. **Conditions of licence** reflecting these determinations are set out in the appendix to this decision.

Non-compliance

13. The licensee was required by condition of licence to caption 100% of the English- and French-language programs broadcast over the broadcast day. Program logs submitted by the licensee showed that insufficient quantities of programming were closed captioned during the 2013-2014, 2014-2015 and 2015-2016 broadcast years.

14. New Tang cited financial reasons for not being in full compliance with its closed captioning requirements. New Tang indicated that it had taken remedial steps to correct the problem, including the formation of a Diversity Council. The council will report on a semi-annual basis to the Commission on the presence and quality of closed captioning on NTD Television English- and French-language programs.
15. The Commission acknowledges the licensee's intention to meet closed captioning requirements throughout the upcoming licence term.
16. In light of the above, the Commission finds the licensee in non-compliance with its requirements for closed captioning. It considers it appropriate to grant New Tang a short-term licence renewal of four years. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.
17. The Commission further **requires** the licensee to report on its compliance with its condition of licence on closed captioning for year one and two of the new licence term. A **condition of licence** to this effect is set out in the appendix to this decision.

Conclusion

18. In light of the above, the Commission **renews** the broadcasting licence for the discretionary service NTD Television¹ from 1 September 2018 to 31 August 2022. The terms and **conditions of licence** for the service are set out in the appendix to this decision.

Reminders

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

¹ In Broadcasting Regulatory Policy 2015-86, the Commission announced that it would consolidate television programming service licences into three broad categories. Under this new streamlined licensing approach, specialty Category B services are now designated as discretionary services.

- *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 2018-327

Terms, conditions of licence, expectations and encouragements for the discretionary service NTD Television

Terms

The licence will take effect 1 September 2018 and expire 31 August 2022.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in Appendix 2 to *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. The licensee shall, in each broadcast year, devote not less than 45% of the previous year's gross annual revenues of the undertaking to the acquisition of or investment in Canadian programming.
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, by each of 30 November 2019 and 30 November 2020, provide a report to the Commission indicating how it complied with its condition of licence relating to closed captioning in the 2018-2019 and 2019-2020 broadcast years, respectively. The condition of licence for closed captioning is set out as condition of licence 11 in Appendix 2 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

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 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

Encouragements

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