



## Broadcasting Decision CRTC 2023-283

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Reference: Part 1 licence renewal application posted on 2 February 2023

Ottawa, 24 August 2023

**TLN Media Group Inc.**  
Across Canada

*Public record: 2022-0859-5*

### Telelatino – Licence renewal

#### Summary

The Commission **renews** the broadcasting licence for the national discretionary service Telelatino from 1 September 2023 to 31 August 2028.

#### Application

1. The Commission has the authority, pursuant to subsections 9(1), 9.1(1) and 11.1(2) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*, and to make orders respecting expenditures.
2. TLN Media Group Inc. (TLN) filed an application to renew the broadcasting licence for the national discretionary service Telelatino, which expires 31 August 2023.<sup>1</sup>
3. The Commission received an intervention from Rogers Communications Canada Inc. offering comments on the application, to which the licensee replied. After examining the intervention and the licensee's reply, the Commission finds that the issues raised by the intervener lie outside the scope of this proceeding.

#### Apparent non-compliance

4. Pursuant to subsection 9(1) of the old *Broadcasting Act*, the Commission had the authority to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deemed appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of that Act.

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<sup>1</sup> At the time of the last licence renewal for this service (see Broadcasting Decision 2017-156), the licensee was Telelatino Network Inc. On 22 March 2019, Telelatino Network Inc. and TLN Media Group Inc. amalgamated to continue as TLN Media Group Inc.

5. Paragraph 3(1)(e) of the *Broadcasting Act* declares that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming. The old *Broadcasting Act* also provided that private networks and programming undertakings should, to an extent consistent with the financial resources available to them, contribute significantly to the creation and presentation of Canadian programming (subparagraph 3(1)(s)(i) of the old *Broadcasting Act*).
6. Pursuant to the authority granted in subsection 9(1) of the old *Broadcasting Act*, and consistent with the provisions set out in paragraph 3(1)(e) and former subparagraph 3(1)(s)(i), in the appendix to Broadcasting Decision 2017-156, the Commission imposed the following condition of licence on Telelatino:
  2. In each broadcast year, the licensee shall devote at least 35% of the broadcast day to the exhibition of Canadian programs.
7. Based on an examination of the programming broadcast by the service, during the 2018-2019 broadcast year, an average of 29% of the broadcast day was devoted to the exhibition of Canadian programs, and for the 2019-2020 broadcast year, an average of 28% of the broadcast day.
8. TLN stated that these instances of non-compliance were unintentional and isolated. The licensee referenced a letter dated 3 March 2021, which it sent in response to a Commission performance evaluation of Telelatino's programming. TLN acknowledged an error in how it calculated the service's hours of Canadian programming as result of moving from a 24-hour broadcast day to an 18-hour broadcast day following the last licence renewal for the service. It also indicated that it corrected its procedures as a result.
9. In light of the above, the Commission finds the licensee in non-compliance with its Canadian programming exhibition requirements for the 2018-2019 and 2019-2020 broadcast years.
10. The Commission notes, however, that the licensee rectified the situation as soon as it was notified of the non-compliance, and that following corrections to the licensee's procedures, there has been no further non-compliance in regard to the exhibition of Canadian programs. The Commission is satisfied with the licensee's explanation and corrective action, and is confident that this problem will not recur in the next licence term. Accordingly, the Commission finds that no further action needs to be taken in regard to the non-compliance.

## Conclusion

11. In light of all of the above, the Commission **renews** the broadcasting licence for the national discretionary service Telelatino from 1 September 2023 to 31 August 2028.
12. Pursuant to the broadcasting policy set out in subparagraph 3(1)(d)(iii) of the *Broadcasting Act*, the Canadian broadcasting system should reflect, among other things, the linguistic duality of Canadian society and the special place of Indigenous peoples and

languages within that society. As an incentive to encourage the reflection of Indigenous Peoples and official language minority communities (OLMC) in the broadcasting system, the Commission has in the past granted licensees that have Canadian programming expenditure (CPE) requirements and are part of large ownership groups a 50% credit towards those requirements for any expenditures on Canadian programming produced by Indigenous or OLMC producers, up to a combined maximum (expenses plus credit) of 10% of the licensee's overall CPE requirement. Only programming costs counting toward CPE as defined in Public Notice 1993-93 are considered eligible for the credit.<sup>2</sup>

13. In the Commission's view, the above incentives and associated requirements should also apply to independent television services. Accordingly, and pursuant to subsection 11.1(2) of the *Broadcasting Act*, the Commission imposes an **order** on the licensee permitting it to claim the credits described above.
14. Under the new *Broadcasting Act*, the Commission has responsibilities to publish and consult on proposed orders. In this case, the renewal application was filed and the public proceeding held prior to the coming into force of the new *Broadcasting Act*, and interested parties had an opportunity to comment on the matters raised by the application as part of that process. Accordingly, in the circumstances, the Commission considers that these responsibilities are satisfied.
15. Pursuant to subsections 49(1) and 50(2) of the *Online Streaming Act*, the conditions of licence that existed prior to the date of royal assent of that Act are deemed to be conditions imposed under an order made pursuant to section 9.1 of the new *Broadcasting Act*, or subsection 11.1(2) in the case of expenditure requirements. As such, the conditions of licence for this licensee became conditions of service and continue to apply to the licensee.
16. In light of paragraphs 1 and 15 of this decision, the Commission has set out **conditions of service** for this licensee in the appendix to this decision. Further, the formal broadcasting licence document issued to a licensee may set out additional requirements for the undertaking, relating to, for example, technical parameters or prohibitions on transfer. The licensee shall also adhere to any such requirements set out in the broadcasting licence for the undertaking.

## Reminder

### Tangible benefits

17. The Commission reminds the licensee that it must pay any remaining tangible benefits stemming from the ownership transaction that was approved on 22 February 2019 in a letter decision, within the timeline set out in the decision.

Secretary General

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<sup>2</sup> These incentives were first announced in Broadcasting Decision 2017-148.

## **Related documents**

- *Telelatino – Licence renewal*, Broadcasting Decision CRTC 2017-156, 15 May 2017
- *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*, Broadcasting Decision CRTC 2017-148, 15 May 2017
- *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 2023-283

### Terms, conditions of service, expectations and encouragements for the national discretionary service Telelatino

#### Terms

The licence will expire 31 August 2028.

#### Conditions of service

1. The licensee shall adhere to the standard conditions of service for discretionary services 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, except for conditions 17 and 18, which are replaced by the following:
  17. The licensee shall provide described video for all English- and French-language programming that is broadcast during prime time (i.e., from 7 p.m. to 11 p.m.), and that is drawn from program categories 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 is programming targeting preschool children (0-5 years of age) and children (6-12 years of age).
  18. As regards the broadcast of advertising material:
    - a) Except as otherwise provided in subparagraphs b) and c), the licensee shall not broadcast more than twelve minutes of advertising material during each clock hour, no more than six minutes of which may consist of local advertising.
    - b) Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.
    - c) In addition to the 12 minutes of advertising material referred to in subparagraph a), the licensee may broadcast partisan political advertising during an election period.
    - d) The licensee is authorized to broadcast local advertising in accordance with subparagraph a) provided that at least 75% of the programming broadcast by licensee consists of programming in a language other than English or French.

For the purposes of this condition of service, “local advertising” is advertising other than national and regional advertising – that is, advertising on behalf of persons who provide goods or services in more than one market and/or province.

Further, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.

2. The licensee shall adhere to all applicable requirements set out in the *Discretionary Services Regulations* that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.<sup>3</sup>
3. In each broadcast year, the licensee shall devote at least 35% of the broadcast day to the exhibition of Canadian programs.
4. (a) In each broadcast year, the licensee shall devote 23% of the previous year's gross revenues of the undertaking to the acquisition of or investment in Canadian programming.
  - (b) 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 this condition; in such case, the licensee shall expend in the next year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under spending.
  - (c) In any broadcast year of the licence term, including the final year, the licensee may expend an amount on Canadian programming that is greater than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee may deduct:
    - i. from the minimum required expenditure for the next year of the licence term, an amount not exceeding the amount of the previous year's over-spending; and
    - ii. from the minimum required expenditure for any subsequent year of the licence term, an amount not exceeding the difference between the over-spending and any amount deducted under paragraph (i) above.
  - (d) Notwithstanding the 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 this condition of service.
5. The licensee shall be responsible for any failure to comply with the requirements regarding Canadian programming expenditures that occurred during the previous licence term.

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<sup>3</sup> Pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*.

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 reported by the licensee for that term.
7. Subject to condition 8, the licensee may claim, in addition to its Canadian programming expenditures:
  - (a) a 50% credit against its Canadian programming expenditure requirement for expenditures on Canadian programming produced by an Indigenous producer and claimed as Canadian programming expenditures during that broadcast year; and
  - (b) a 25% credit against its Canadian programming expenditure requirement for expenditures 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
    - the programming is produced in the province of Quebec and the original language of production is English; or
    - the programming is produced outside the province of Quebec and the original language of production is French.
8. The licensee may claim the credits calculated in accordance with condition 7 until the expenditures on Canadian programming produced by Indigenous producers and by official language minority community producers, including the credits, reach a combined maximum of 10% of the undertaking's Canadian programming expenditure requirement.
9. The licensee shall not include or enforce any provision in or in connection with an affiliation agreement that is designed to prevent, or is designed to create incentives that would effectively prevent another programming undertaking or broadcasting distribution undertaking from launching or distributing another licensed programming service.
10. The licensee shall provide a minimum of 90 days written notice of the impending launch of a new programming service to all broadcasting distribution undertakings. Such notice shall be accompanied by an offer that sets out the general terms of carriage of the programming service to be launched.
11. The licensee shall not:
  - (a) require an unreasonable rate (e.g., not based on fair market value);
  - (b) require a party with which it is contracting to accept terms or conditions for the distribution of programming on a traditional or ancillary platform that are commercially unreasonable;
  - (c) require an excessive activation fee or minimum subscription guarantee;

(d) impose, on an independent party, a most favoured nation (MFN) clause or any other condition that imposes obligations on that independent party by virtue of a vertically integrated entity or an affiliate thereof entering into an agreement with any vertically integrated entity or any affiliate thereof, including its own.

The application of the foregoing condition of service is suspended so long as the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

12. When negotiating a wholesale rate for a programming service based on fair market value, the licensee shall take into consideration the following factors:

- (a) historical rates;
- (b) penetration levels and volume discounts;
- (c) the packaging of the service;
- (d) rates paid by unaffiliated broadcasting distributors for a programming service;
- (e) rates paid for programming services of similar value to consumers;
- (f) the number of subscribers that subscribe to a package in part or in whole due to the inclusion of the programming service in that package;
- (g) the retail rate charged for the service on a stand-alone basis;
- (h) the retail rate for any packages in which the service is included.

The application of the foregoing condition of service is suspended so long as the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

13. If the licensee has not renewed an affiliation agreement that it signed with a licensed or exempted Canadian television programming undertaking or a broadcasting distribution undertaking within 120 days preceding the expiry of the agreement and if the other party has confirmed its intention to renew the agreement, the licensee shall submit the matter to the Commission for dispute resolution pursuant to sections 12 to 15 of the *Broadcasting Distribution Regulations*.

The application of the foregoing condition of service is suspended so long as the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.



14. The licensee shall not:

- (a) require minimum penetration or revenue levels that force distribution of a service on the basic tier or in a package that is inconsistent with the service's theme or price point;
- (b) refuse to make programming services available on a stand-alone basis (i.e., requiring the acquisition of a program or service in order to obtain another program or service);
- (c) impose terms that prevent an unrelated distributor from providing a differentiated offer to consumers.

The application of the foregoing condition of service is suspended so long as the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

15. The licensee shall not refuse to make available or condition the availability of or carriage terms for any of its licensed programming services to any broadcasting distribution undertaking (BDU) on whether that BDU agrees to carry any other separately licensed programming service, provided that this condition does not prevent or limit the right or ability of the licensee to offer BDUs multiservice or other discounts, promotions, rebates or similar programs.

The application of the foregoing condition of service is suspended so long as the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

16. The licensee shall negotiate with broadcasting distribution undertakings (BDU) for non-linear multiplatform rights to the content broadcast on the licensee's programming service at the same time as linear rights for its programming service and provide those rights to BDUs on a timely basis and on commercially reasonable terms. For certainty, nothing in this condition of service shall prevent or otherwise restrict the licensee from requesting compensation in exchange for making such non-linear rights available to BDUs.

The application of the foregoing condition of service is suspended so long as the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

17. The licensee shall file with the Commission all affiliation agreements to which it is a party with a television programming undertaking or broadcasting distribution undertaking within five days following the execution of the agreement by the parties.

The application of the foregoing condition of service is suspended so long as the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, is in effect.

## Definitions

For the purposes of these conditions of service:

The terms “broadcast day,” “broadcast year” and “clock hour” shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*.

**Indigenous producer** means an individual who self-identifies as Indigenous, which includes First Nations, Métis and 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 (OLMC) producer** means a company that meets the definition of “independent production company” and that, if operating in the province of Quebec, produces original English-language programming, or if operating outside of the province of Quebec, produces original French-language programming.

### Clarification for OLMC producer

To be considered an OLMC producer in Canada, a production company must:

- if it produces original programming in English, have its head office in Quebec and be owned and operated by a resident of Quebec;
- if it produces original programming in French, have its head office outside Quebec and be owned and operated by a resident outside of Quebec.

## Expectations

### Standard expectations

The standard expectations for discretionary services 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.

### Cultural diversity

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

## **Encouragements**

### **Standard encouragements**

The standard encouragements for discretionary services 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.