



## Broadcasting Decision CRTC 2023-367

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Reference: Part 1 licence renewal application posted on 19 January 2023

Ottawa, 15 November 2023

**Saskatchewan Telecommunications**  
Province of Saskatchewan

*Public record: 2022-0776-1*

### MaxTV – Licence renewal

#### Summary

The Commission **renews** the broadcasting licence for the regional, English-language on-demand service MaxTV from 1 January 2024 to 31 August 2027. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.

#### 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. Saskatchewan Telecommunications (SaskTel) filed an application to renew the broadcasting licence for the regional, English-language on-demand service MaxTV, which expires 31 December 2023<sup>1</sup>. The Commission did not receive any interventions in regard to this application.

#### Non-compliance in regard to Canadian content exhibition

3. 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> The original licence expiry date for the service was 31 August 2023. The licence was administratively renewed to 31 December 2023 as a result of Broadcasting Decision 2023-299.

4. 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.
5. 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 Regulatory Policy 2017-138, the Commission imposed the following conditions of licence on on-demand services, including MaxTV:<sup>2</sup>
  7. If feature films are offered, the licensee shall ensure that not less than 5% of the English-language feature films and not less than 8% of French-language feature films available to subscribers in each broadcast year are Canadian.
  9. The licensee shall ensure that not less than 20% of all programming other than feature films available to subscribers in each broadcast year are Canadian.
6. Based on Commission records, for MaxTV during the 2019-2020 broadcast year, the proportion of Canadian English-language feature films available to subscribers was less than 8%. Further, for the 2018-2019 and 2019-2020 broadcast years, the proportion of all Canadian programming other than feature films available to subscribers were less than 20%.
7. In regard to condition of licence 7, SaskTel noted that reporting difficulties and the COVID-19 pandemic were the core issues during the 2019-2020 broadcast year. It added that if one more Canadian English-language feature film had been offered, it would have been compliant with this requirement for that broadcast year.
8. In regard to condition of licence 9, SaskTel indicated that in the 2018-2019 broadcast year, there were errors in its internal reporting, some of which were due to new staff who were not familiar with its systems. It further indicated that it also had challenges receiving accurate Canadian content indicators on the titles it received from content providers. The licensee added that manual internal checks indicated that the service's Canadian content level was, in fact, higher than it had indicated in its reporting for the 2018-2019 broadcast year. The Commission notes, however, that the licensee did not submit any documentation to validate this claim.
9. In regard to the 2019-2020 broadcast year, SaskTel stated that adjusting to remote work because of the COVID-19 pandemic compounded its internal monitoring and reporting issues and made taking remedial actions more difficult. It added that it was more difficult to source Canadian content compared to before the pandemic, and that content production and release for Canadian exhibition was negatively affected during this period. Finally, the licensee submitted that its operations and the content production industry have mostly returned to pre-pandemic conditions, which in its

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<sup>2</sup> The requirement for the licensee of this service to adhere to the requirements set out in Broadcasting Regulatory Policy 2017-138 is set out in Broadcasting Decision 2018-205.

view will help it in meeting its Canadian content exhibition requirements going forward.

10. The Commission acknowledges the challenges for Canadian broadcasters caused by the COVID-19 pandemic in relation to sourcing and acquiring content during the 2019-2020 broadcast year and indicated, in Broadcasting Decision 2021-274, that it would examine instances of non-compliance relating to exhibition and content requirements on a case-by-case basis at the time of licence renewal. It added that it would take into account the specific circumstances of each licensee, including the different challenges faced during the pandemic.
11. In the case of on-demand services such as MaxTV, where undertakings generally enter into program supply agreements several months before content is planned to be available on the on-demand platform, the Commission considers that the impact of the pandemic on MaxTV is likely to have been limited for the 2019-2020 broadcast year, compared to other broadcast years. This is particularly relevant to services relying more heavily on live or very recent programming such as sporting events, public concerts and public exhibitions, which resulted in a lack of Canadian content which would have otherwise been offered to subscribers.
12. In light of the above, the Commission finds SaskTel in non-compliance with its Canadian feature film exhibition requirement set out in standard condition 7 for the 2019-2020 broadcast year and with its non-film Canadian content exhibition requirements set out in standard condition 9 for the 2018-2019 and 2019-2020 broadcast years.
13. In the Commission's view, the issues of non-compliance are not substantial. SaskTel also submitted that the human errors that led to these issues would not reoccur going forward. Nonetheless, the Commission notes that the compliance issues were varied, and that in some cases they were recurrent or pre-dated the pandemic. Sasktel also failed to explain adequately how it would prevent these human errors going forward.
14. As a result, the Commission finds that it would be appropriate to renew the licence for MaxTV for a short-term period, which will allow for an earlier review of the licensee's compliance with its regulatory requirements. Further, the Commission **directs** SaskTel to file a corrected version of its Canadian content exhibition levels for the 2018-2019 broadcast year.
15. Further, pursuant to section 9.1(1) of the *Broadcasting Act*, the Commission **orders** SaskTel, by **condition of service**, to file a corrected version of its Canadian film and non-film content exhibition levels for the 2018-2019 broadcast year. The specifics of this condition of service are set out in the appendix to this decision.

## Employment Equity

16. SaskTel is currently subject to the standard conditions and expectations for pay-per-view services, which are set out in the appendix to Broadcasting Regulatory Policy 2017-138, with the exception of expectations 11 and 12 relating to employment equity. SaskTel requested to maintain these exceptions.
17. The expectations at issue note that entities with 100 or more employees are subject to the Employment Equity Act and indicate that entities with between 25 and 99 employees should have an employment equity plan in place, consistent with the Commission's Employment Equity Policy. Sasktel submitted that it is a provincial Crown corporation not subject to the federal Employment Equity Act, and that it participates actively in the Employment Equity Program of the Saskatchewan Human Rights Commission.
18. Given that SaskTel is an agent of the provincial Crown, the Commission finds that it would be appropriate to maintain the exception to the standard expectations relating to employment equity. However, the Commission encourages the licensee to continue considering employment equity issues in its hiring practices and in all other aspects of its management of human resources.

## Conclusion

19. In light of all of the above, the Commission **renews** the broadcasting licence for the regional, English-language on-demand service MaxTV from 1 January 2024 to 31 August 2027.
20. With respect to the condition of service imposed at paragraph 15, given that this renewal application was filed and published prior to the coming into force of the new *Broadcasting Act*, and that interested parties had an opportunity to comment on the issue of the licensee's compliance with its Canadian content exhibition requirements, the Commission considers the public proceeding sufficient to achieve the purposes of the publication and consultation requirement set out in subsection 9.1(4) of the new *Broadcasting Act* in this case.
21. 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.
22. For ease of reference, and in light of paragraph 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.

Secretary General

### **Related documents**

- *Various conventional and educational television programming undertakings, community programming services, discretionary services, on-demand services and terrestrial broadcasting distribution undertakings – Administrative renewals, Broadcasting Decision CRTC 2023-299, 29 August 2023*
- *Regulatory relief for private Canadian broadcasters in the context of the COVID-19 pandemic, Broadcasting Decision CRTC 2021-274, 12 August 2021*
- *MaxTV – Licence renewal, Broadcasting Decision CRTC 2018-205, 13 June 2018*
- *Standard requirements for on-demand services, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017*

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

## **Appendix to Broadcasting Decision CRTC 2023-367**

### **Terms, conditions of service, expectations and encouragements for the regional, English-language on-demand service MaxTV**

#### **Terms**

The licence will expire 31 August 2027.

#### **Conditions of service**

1. The licensee shall adhere to the conditions of service set out in *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017. 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. The licensee shall file a corrected version of its Canadian film and non-film content exhibition levels for the 2018-2019 broadcast year within 30 days of the publication of Broadcasting Decision 2023-367.

#### **Expectations**

##### **Standard expectations**

The licensee shall adhere to the standard expectations for on-demand services set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017, with the exception of expectations 11 and 12.

##### **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 applicable to this licensee are set out in the appendix to *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017.

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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*.

**Employment equity**

The Commission encourages the licensee to consider employment equity in its hiring practices and in all other aspects of its management of human resources.