



Broadcasting Decision CRTC 2023-405

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Reference: Part 1 licence renewal application posted on 17 March 2023

Ottawa, 7 December 2023

2190015 Ontario Inc.

Hamilton, Ontario, and various locations in Ontario

Public record: 2022-0872-7

CHCH-DT Hamilton and its transmitters – Licence renewal and licence amendment

Summary

The Commission **renews** the broadcasting licence for the independent conventional television station CHCH-DT Hamilton, Ontario, and its transmitters CHCH-DT-1 Ottawa, CHCH-DT-2 London, CHCH-DT-3 Muskoka, CHCH-TV-4 Sudbury, CHCH-TV-5 Sault Ste. Marie, CHCH-TV-6 North Bay and CHCH-TV-7 Timmins from 1 January 2024 to 31 August 2028.

The Commission **denies** the licensee's request to decrease its Canadian programming expenditures from 30% to 25% of the previous broadcast year's gross revenues of the station.

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. 2190015 Ontario Inc. (2190015 Ontario) filed an application to renew the broadcasting licence for the independent conventional television station CHCH-DT Hamilton, Ontario, and its transmitters CHCH-DT-1 Ottawa, CHCH-DT-2 London, CHCH-DT-3 Muskoka, CHCH-TV-4 Sudbury, CHCH-TV-5 Sault Ste. Marie, CHCH-TV-6 North Bay and CHCH-TV-7 Timmins, which expires 31 December 2024.¹ The Commission did not receive any interventions in regard to this application.

¹ The original licence expiry date for CHCH-DT was 31 August 2023. The licence for this station was administratively renewed until 31 December 2023 as a result of Broadcasting Decision 2023-299.

3. The licensee also requested to decrease its Canadian programming expenditures (CPE) requirement, from 30% to 25% of the previous broadcast year's gross revenues of the station.

Canadian programming expenditures

4. As set out in Appendix 3 to Broadcasting Decision 2018-478, 2190015 Ontario is required to devote in each broadcast year not less than 30% of the previous broadcast year's gross revenues of CHCH-DT to the acquisition of or investment in Canadian programming.
5. In regard to its request to decrease the CPE requirement for CHCH-DT from 30% to 25%, the licensee submitted that approval of its request would help it to manage its way through uncertainty without being placed in a position of having to suddenly apply to the Commission for regulatory relief at the first sign of difficulty. The licensee listed cost and access to foreign program rights, pressure on both local and national advertising, and high current rates of inflation as challenges that are affecting every aspect of its business.
6. 2190015 Ontario noted that it has seen a significant softening in national and local advertising revenues for CHCH-DT and an increase in the station's operating costs for the 2022-2023 broadcast year. It added that there has been an ongoing decline in support from the Independent Local News Fund (ILNF) along with uncertainty regarding the number of independent stations eligible to access it, as well as uncertainty regarding the *Online Streaming Act* and the *Online News Act*.²
7. The licensee added that it has a track record of exceeding its CPE requirements, and that it treats its Canadian programming obligations as a floor, not a ceiling. In its view, the regulatory risk of granting it the requested flexibility is minimal.
8. The Commission notes that CPE contribution requirements are based on a percentage of the previous broadcast year's revenues. As such, although the licensee pointed to a fluctuation in revenues and funding support from the ILNF as rationale for its request, any decline in CHCH-DT's revenues would translate into a decrease in its CPE requirement (in absolute dollars), relative to the previous broadcast year's gross revenues.
9. In regard to the licensee's concerns regarding the ILNF, the Commission notes that as a result of Broadcasting Decision 2020-154, in which the Commission approved an application by Bell Canada, on behalf of V Interactions inc., for authority to change the ownership and effective control of V Interactions inc., and to integrate the V Stations into the French-language Bell Media Group, the former V Stations were removed from the ILNF. Consequently, the share of funding allocated to V Interactions inc. and its stations was dispersed to the remaining 19 ILNF stations,

² At the time of the filing of the application, both the *Online Streaming Act* and the *Online News Act* had not received royal assent.

including CHCH-DT. As well, the ILNF recently received a \$4,357,421 lump sum payment as a result of Broadcasting Decision 2022-76.

10. The Commission acknowledges the uncertainties surrounding the future state of the broadcasting industry. It is of the view, however, that it would be more appropriate for the time being to maintain CHCH-DT's current CPE requirement of 30% of the previous broadcast year's gross revenues. CPE constitutes one of the pillars of the Canadian broadcasting system. This approach is subject to potential change flowing from the proceeding initiated by Broadcasting Notice of Consultation 2023-138;³ however, while the proceeding is ongoing, the Commission's general CPE policies remain in place.
11. In light of the above, the Commission **denies** the licensee's request to decrease its CPE requirement to 25% of the previous broadcast year's gross revenues.

Described video

12. In the current licence term, the Commission had imposed obligations with respect to accessibility of programming on licensees including CHCH-DT. This included Broadcasting Decision 2020-358, where the Commission approved an application by 2190015 Ontario to amend the condition of licence for CHCH-DT relating to the provision of described video during prime time. The approved condition reads as follows:

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) with the exception of U.S. programming received without described video less than 24 hours prior to air. Such programs will be broadcast with described video for any repeat airings scheduled greater than 24 hours from delivery.

13. Paragraph 3(1)(p.1) of the *Broadcasting Act* declares that programming that is accessible without barriers to persons with disabilities should be provided within the Canadian broadcasting system.
14. For the purposes of monitoring the broadcasting system and ensuring the achievement of policy objectives, including those relating to accessibility, the Commission has the authority to impose monitoring and reporting requirements on licensees. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** 2190015 Ontario Inc., by **condition of service**, to keep reports of all U.S. programs

³ This proceeding relates to a modernized regulatory framework regarding contributions to support Canadian and Indigenous content.

received without described video and broadcast in prime time and to submit this report upon request. A template document reflecting the requirements of this report will be made available to the licensee. The specifics of this condition are set out in the appendix to this decision.

15. 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.

Conclusion

16. In light of all of the above, the Commission **renews** the broadcasting licence for the independent conventional television programming undertaking CHCH-DT Hamilton, Ontario, and its transmitters CHCH-DT-1 Ottawa, CHCH-DT-2 London, CHCH-DT-3 Muskoka, CHCH-TV-4 Sudbury, CHCH-TV-5 Sault Ste. Marie, CHCH-TV-6 North Bay and CHCH-TV-7 Timmins from 1 January 2024 to 31 August 2028.
17. Further, the Commission **denies** the licensee's request to decrease its CPE requirement.
18. 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.
19. For ease of reference and in light of paragraph 14 of this decision, the Commission has set out the **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.

Force and effect of broadcasting licences

20. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licence renewed in this decision will cease to have any force or effect should the broadcasting certificates issued by the Department of Industry (also known as Innovation, Science and Economic Development Canada) lapse.

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
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2023-138, 12 May 2023
- *Shaw Communications Inc. – Change of ownership and effective control*, Broadcasting Decision CRTC 2022-76, 24 March 2022
- *CHCH-DT – Licence amendment*, Broadcasting Decision CRTC 2020-358, 26 October 2020
- *V Interactions inc. – Change in ownership and effective control*, Broadcasting Decision CRTC 2020-154, 19 May 2020
- *Various independent conventional television programming undertakings – Licence renewals*, Broadcasting Decision CRTC 2018-478, 18 December 2018

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-405

Terms, conditions of service, expectations and encouragements for the independent conventional television programming undertaking CHCH-DT Hamilton, Ontario and its transmitters CHCH-DT-1 Ottawa, CHCH-DT-2 London, CHCH-DT-3 Muskoka, CHCH-TV-4 Sudbury, CHCH-TV-5 Sault Ste. Marie, CHCH-TV-6 North Bay and CHCH-TV-7 Timmins

Terms

The licence will expire 31 August 2028.

Conditions of service

1. The licensee shall adhere to the standard conditions of service set out in Appendix 1 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016, with the exception of condition 14, which is replaced by the following:

14. 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) with the exception of U.S. programming received without described video less than 24 hours prior to air. Such programs will be broadcast with described video for any repeat airings scheduled greater than 24 hours from delivery.

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

2. The licensee shall keep reports (including the following: air date, start and end time, duration, program title, episode title/number, first airing, U.S. airdate, delivery date, repeat airing date, and details on whether or not the episode included described video) of all U.S. programs received without described video and broadcast in prime time, including U.S. programming received without described video prior to the 24 hours exemption threshold that the licensee is required to describe. This report must be submitted upon request.

3. The licensee shall adhere to all applicable requirements set out in the *Television Broadcasting Regulations, 1987* that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.⁴
4. In accordance with paragraph 90 of *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016, the television station is declared to be a “designated local television station.” The station will maintain this designation for the duration of the licence term as long as the television station remains in operation.
5. In accordance with *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016, the licensee shall devote, in each broadcast year, not less than 18% of the station’s previous broadcast year’s gross revenues to investments in locally reflective news or on acquisition thereof.
6. In each broadcast year of the licence term, excluding the final year:
 - (a) the licensee may expend an amount on locally reflective news that is up to 5% less than the minimum required expenditure for that year;
 - (b) where the licensee expends an amount for that year on locally reflective news that is greater than the minimum required, the licensee may deduct that amount from the minimum required expenditure in one or more of the remaining years of the licence term; and
 - (c) the licensee shall ensure that the television station expends on locally reflective news the total of the minimum required expenditures calculated in accordance with condition 5.
7. The licensee shall broadcast at least 3 hours of locally reflective news in each broadcast week.
8. The licensee shall in each broadcast year devote to the acquisition of or investment in Canadian programming a minimum of 30% of the previous broadcast year’s gross revenues of the undertaking.
9. Subject to condition 10, the licensee may claim, in addition to its expenditures on Canadian programming:
 - (d) a 50% credit against its Canadian programming expenditure requirements for expenditures made on Canadian programming produced by an Indigenous

⁴ 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*.

producer and claimed as Canadian programming expenditures during that broadcast year;

(e) 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.

10. The licensee may claim the credits calculated in accordance with condition 9 until the expenditures made on Canadian programming produced by Indigenous producers and by official language minority community producers, including credits, reach a maximum of 10% of the Canadian programming expenditure requirement for the undertaking.

11. In regard to Canadian programming expenditures:

- (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 service 8; 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 service 8.

Definitions

For the purposes of these conditions of service:

The term “broadcast year” shall have the same meaning as that 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.

“Local programming” means programming produced by either local stations with local personnel or locally based independent producers, that is of interest to the community or market served (i.e., locally relevant).

“Locally reflective news” means programming that meets the criteria set out in paragraphs 56 to 58 of *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016.

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

- (a) if it produces original programming in English, have its head office in Quebec and be owned and operated by a resident of Quebec; and
- (b) 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 applicable to this licensee are set out in Appendix 1 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 applicable to this licensee are set out in Appendix 1 to *Standard requirements for television stations, discretionary services, and on-demand services*, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016.

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity in its hiring practices and in all other aspects of its management of human resources.