



## Broadcasting Decision CRTC 2004-12

Ottawa, 21 January 2004

**TELETOON Canada Inc.**  
Across Canada

*Application 2002-0942-0  
Public Hearing in the National Capital Region  
26 May 2003*

### **Teletoon/Télétoon – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Teletoon/Télétoon, from 1 March 2004 to 31 August 2010. The details regarding the licensee's specific proposals for the new licence term, and the conditions of licence and other obligations determined by the Commission are set out below.*

### **The application**

1. The Commission received an application by TELETOON Canada Inc. (Teletoon Canada) for the renewal of the broadcasting licence for the national, English- and French-language, specialty television service known as Teletoon/Télétoon. The service provides both English- and French-language programming on separate signals originating in the Eastern time zone, and English-language programming on a second signal originating in the Pacific time zone.
2. The Commission's general analysis with respect to its consideration of this and other applications heard at the 26 May 2003 Public Hearing for the licence renewal of specialty television services is set out in *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004 (Public Notice 2004-2).
3. The Commission received 42 interventions specifically in support of Teletoon/Télétoon's licence renewal. In addition to those submissions, two expressed a desire to see a greater commitment to the acquisition of French-language production from Quebec producers. Five expressed specific concern for the potential broadening of Teletoon/Télétoon's nature of service through the addition of program categories. Three interventions suggested alternate peak time definitions and requested that production by related producers should be limited to 25%, and one opposed entirely a proposed shift in peak viewing period. The concerns raised by the interveners related to this application specifically are discussed in this decision.

4. Other interveners raised general concerns related to all of the specialty television licence renewal applications considered as part of this public process. These concerns are discussed in Public Notice 2004-2.
5. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence for Teletoon/Télétoon, from 1 March 2004 to 31 August 2010.<sup>1</sup> The licence will be subject to the conditions specified therein and to the conditions set out in the appendix to this decision.
6. The licensee requested the renewal of the licence for Teletoon/Télétoon under the same terms and conditions as the existing licence, with the exception of the addition of categories 7(a) Ongoing dramatic series, 7(b) Ongoing comedy series (sitcoms), 7(c) Specials, mini-series or made-for-TV feature films and 7(g) Other drama to the list of categories from which Teletoon/Télétoon may draw its programming. The licensee also proposed to amend the definition of “peak viewing period” for the purpose of assessing the exhibition of Canadian programming on Teletoon/Télétoon.

### **Expenditures on Canadian programming**

7. In each year of the current licence term, Teletoon Canada has been required by condition of licence to expend on Canadian programs a minimum of 40% of the previous year's total revenues with respect to Teletoon/Télétoon.
8. In its renewal application, and at the public hearing, Teletoon Canada stated its commitment to adhere to its current level of Canadian programming expenditures (CPE). In support of its view that Teletoon/Télétoon's CPE should not be increased, the licensee stated that its current requirement is higher than any other specialty service targeted to children, and that CPE requirements based on profitability are not necessarily valid. Teletoon Canada indicated that, under the existing 40% requirement, it projects expenditures of \$176 million on Canadian programming over the new licence term.
9. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been over 40%. Taking this into account, and consistent with the approach described in Public Notice 2004-2, the Commission has determined that an increase of seven percentage points is appropriate. Accordingly, the Commission is requiring the licensee, in each year of the licence term, to expend 47% of the previous year's gross revenues on Canadian programming, beginning 1 September 2004. A **condition of licence** to this effect is set out in the appendix to this decision.

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<sup>1</sup> In *Administrative renewals*, Broadcasting Decision CRTC 2003-290, 21 July 2003, the Commission granted a six-month administrative renewal of Teletoon/Télétoon, from 1 September 2003 to 29 February 2004.

## **Nature of service**

10. In its application, Teletoon Canada requested an amendment to Teletoon/Télétoon's current condition of licence describing its nature of service, in order to add program categories 7(a) On-going dramatic series, 7(b) On-going comedy series (sitcoms), 7(c) Specials, mini-series or made-for-TV feature films, and 7(g) Other drama to the list of categories from which Teletoon/Télétoon may draw its programming. Teletoon Canada stated that, consistent with its original condition of licence, no more than 10% of its programming would be non-animated programming drawn from categories other than 7(d) Theatrical feature films aired on TV and 7(e) Animated television programs and films.
11. During the licence renewal process, the Commission asked Teletoon Canada to propose a description that the licensee could accept as a condition of licence, and that would more closely describe the nature of Teletoon/Télétoon's service.
12. In response to the Commission's request, Teletoon Canada proposed that a maximum of 5% of all programming would be drawn from categories 12 Interstitials, 13 Public service announcements and 14 Infomercials, promotional and corporate videos. Of the remaining programming, at least 90% of all programming would be animated programming drawn from categories 7(d) and 7(e). All other programs would consist exclusively of "animation-related" programming except for material from categories 12, 13 and 14. The licensee proposed that animation-related be defined as:
  - i) programs that were originally inspired by animated or illustrated characters or concepts;
  - ii) programs that contain animation and non-animation formats within a single program; or
  - iii) programs about animation or animators/illustrators.
13. At the hearing, the licensee withdrew its request to add category 7(g) to the list of categories from which Teletoon/Télétoon's programming may be drawn. It also indicated that it did not require category 15 Filler programming, and requested the addition of category 5(b) Informal education/recreation and leisure to accommodate the broadcast of programming about animation.

## **Interventions**

14. Five interventions were submitted in opposition to the proposed addition of categories and expressing concern about the proposed definition of animation-related programming. Those interveners were the Société des auteurs de radio, télévision et cinéma (SARTEC), CHUM Limited (CHUM), the Canadian Broadcasting Corporation (CBC), TQS inc. (TQS) and Global Television Network Inc. (Global). All of those interveners expressed concern that a broadening of Teletoon/Télétoon's nature of service would result from approval of the proposal.

15. SARTEC opposed the addition of any non-animated programming to Teletoon/Télétoon, on the grounds that it would not be in keeping with the service's nature of service.
16. CHUM expressed a concern that "animated-related" was too broad a term, and that examples given by Teletoon Canada, such as *Star Trek*, *Beetlejuice* and *The Addams Family* are best classified as science fiction and fantasy, and would be more suitable for broadcast on Space: the Imagination Station, owned by CHUM. CHUM also disagreed with Teletoon Canada's view that the live-action examples given were appropriate for exhibition on an animation service because they were inspired by well-known animated series and characters. CHUM maintained that this is not the case, since a number of the examples were "originally science fiction or fantasy feature films or television series that were later made into animated-series in order to appeal to children, not vice-versa."
17. CHUM took the position that approval of Teletoon Canada's proposal would "allow Teletoon to derogate from its original commitment to broadcast programming in the animation field".
18. The CBC stated in its intervention that Teletoon Canada's proposal, if approved, could permit programming on the French-language feed to overlap with that of existing French-language broadcasters and compete with conventional broadcasters such as Radio-Canada. The CBC was further concerned that non-animated programming could be broadcast on Teletoon/Télétoon during prime time, further exacerbating the threat to other services.
19. TQS took the position that the addition of non-animated drama and comedy programming, especially 7(a), would result in a fundamental change to Teletoon/Télétoon's nature of service, and would allow the service to compete with conventional networks such as TQS.
20. Global indicated in its intervention that the Commission should not approve any proposal that would allow a specialty service to increase its foreign Category 7 programming by more than 10%.

**Teletoon Canada's replies**

21. In response to the concerns expressed by a number of interveners, the licensee submitted that:

... the additional sub-categories sought for the service are non-substantive in nature, and the fact that no more than 10% of Teletoon/Télétoon's overall schedule can be comprised of non-animated programming underscores the inherent safeguard built in to our nature of service, which should effectively meet any of the concerns raised by the interveners.

22. In addition, in reply to CHUM's intervention, Teletoon Canada expressed the view that CHUM had mischaracterized the proposed changes, stating that the changes "are in reality, non-substantive amendments to Teletoon's existing licence condition", since the original condition allows Teletoon/Télétoon to include both animated and live-action feature films in its schedule.
23. Teletoon Canada also clarified that "it does not intend to acquire live-action programming such as the *Star Trek* series as such series would not fall within the scope of an *animation-related* program".

#### **The Commission's analysis and determination**

24. The Commission notes that Teletoon/Télétoon has been a successful animation service, and notes the statements by the licensee that it recognizes that its continued success lies in retaining the character of Teletoon/Télétoon as an animation service.
25. The Commission is satisfied that the changes proposed serve to clarify the existing service offered by the licensee and will not expand its nature of service. The Commission therefore adds the phrase "devoted to animation and animated-related programs" to the condition of licence describing Teletoon/Télétoon's nature of service.
26. With respect to the addition of category 5(b), the Commission is satisfied that the inclusion of this category would allow Teletoon/Télétoon to broadcast "how-to" programming related to animation that would be consistent with Teletoon/Télétoon's nature of service, and has added category 5(b) to the list of categories from which Teletoon/Télétoon may draw its programming.
27. The Commission further notes that, as proposed by the licensee, a maximum of 5% of all programming on Teletoon/Télétoon may be drawn from categories 12, 13 and 14. Of the remaining programming, 90% would continue to be animated programming drawn from categories 7(d) and 7(e). The Commission also notes that, with the stricter nature of service definition approved above, all programming on the service, other than that drawn from categories 12, 13 and 14, would be animated or animation-related.
28. The Commission therefore **approves** the licensee's request to add program categories 7(a), 7(b), and 7(c) to the list of categories from which Teletoon/Télétoon may draw its programming, and to delete category 15 from that list.
29. The **condition of licence** describing the nature of Teletoon/Télétoon's service is set out in the appendix to this decision, and includes all of the changes approved by the Commission.

#### **The definition of "peak viewing period"**

30. Teletoon/Télétoon is currently required to devote 60% of the "evening broadcast period" (6:00 p.m. to midnight) to the broadcast of Canadian programs.

31. As part of its renewal application, Teletoon Canada proposed to modify its evening broadcast period with a new definition of “peak period”. The licensee indicated that, in order to best serve its core audience of family viewers, a more appropriate “peak period” would be from 2:00 p.m. to 8:00 p.m. each day.

### **Interventions**

32. One intervention in opposition to the licensee’s proposal was submitted by Société de télédiffusion du Québec (Télé-Québec). The intervener expressed the concern that, if the proposed shift in “peak period” were to be adopted, Teletoon/Télétoon would be able to broadcast entirely foreign programming between the hours of 8:00 p.m. and midnight. The intervener stated that the change is not necessary for financial reasons, and that allowing Teletoon/Télétoon to abandon Canadian programming between 8:00 p.m. and midnight would harm both competing broadcasters and Canadian program producers. Global’s intervention also expressed a concern that the proposed shift in peak period could increase the quantity of foreign programming that could appear on Teletoon/Télétoon during the evening hours.
33. Four interventions were submitted with alternative proposals for Teletoon/Télétoon’s “peak period”. The four interveners were the Canadian Film and Television Production Association (CFTPA), the Association des Producteurs de Films et de Télévision du Québec (APFTQ), Productions Pascal Blais and the Union des Artistes (UDA).
34. The CFTPA suggested a more appropriate peak period for Teletoon/Télétoon would be 3:30 p.m. to 9:30 p.m., and the APFTQ suggested the hours 4:00 p.m. to 10:00 p.m. Both of these interveners made their suggestions on the grounds that the alternative time periods would encompass both the after-school time period aimed at children under 12 years of age, and part of the evening hours aimed at teens, young adults and viewers over 18 years old.
35. The intervention submitted by Productions Pascal Blais suggested that Teletoon/Télétoon’s peak period should be 4:00 p.m. to 10:00 p.m., so as to capture a larger age range. The UDA indicated that, since students arrive home from school at 3:30 p.m. and generally watch television until 9:00 p.m., the peak period should be 3:00 p.m. to 9:00 p.m. The UDA also suggested that, for Teletoon/Télétoon, the period from 6:00 a.m. to 7:30 a.m. could also be considered a peak period.

### **The licensee’s reply**

36. Teletoon Canada responded to the interventions by reiterating that its proposal to shift the peak period to 2:00 p.m. to 8:00 p.m. was intended to maximize Teletoon/Télétoon’s core audience of 2-11 year olds, provide significant Canadian content to pre-schoolers, and to establish an appropriate demarcation point after which Teletoon/Télétoon’s primary target audience would change from its younger viewers to an audience primarily made up of parents, teens and young adults.

37. In response to the concern that, if the change were approved, Teletoon/Télétoon would have free rein to schedule foreign programming after 8:00 p.m., the licensee expressed its continuing commitment to schedule Canadian programs reasonably throughout the broadcast day, and stated that a number of existing and proposed Canadian programs are planned for broadcast after 8:00 p.m. At the hearing, Teletoon Canada made a commitment that a minimum of one hour of Canadian programming would be broadcast daily between 8:00 p.m. and midnight.

#### **The Commission's analysis and determination**

38. The Commission has considered the positions of both the licensee and the interveners, and recognizes that children do tune to television services at different times than do adults. The Commission notes that Teletoon/Télétoon does not attract the bulk of its audience between 6:00 p.m. and midnight, as do most specialty television services, but appears to have a peak period in the early morning, and again from 3:00 p.m. to 9:00 p.m. on the English feed and from 4:00 p.m. to 10:00 p.m. on the French-language feed. In particular, BBM data shows a definite peak in Teletoon/Télétoon's viewership, beginning at 8:00 p.m. on the English-language feed and beginning at 9:00 p.m. on the French-language feed.
39. The Commission is of the view that an alternate peak period would recognize that Teletoon/Télétoon has a different peak viewing period than other specialty services. However, the Commission wishes to ensure that, during the evening viewing period, viewers continue to have access to Canadian programming. The Commission has therefore decided to adopt a peak period of 4:00 p.m. to 10 p.m. This revised peak period would also have the potential to stimulate some production of Canadian animated material that would appeal to a slightly older audience. A revised period of from 4:00 p.m. to 10:00 p.m. would ensure that, at times when Teletoon/Télétoon's audience is greatest, a significant percentage of the programming being viewed would be Canadian.
40. Accordingly, the Commission **approves in part** the licensee's request. The Commission will define Teletoon/Télétoon's "peak period" as the time period each day between 4:00 p.m. and 10:00 p.m. In addition, consistent with the licensee's commitment, the Commission requires that at least one hour of each broadcast day between 8:00 p.m. and midnight be devoted to the broadcast of Canadian programs. A **condition of licence** to this effect is set out in the appendix to this decision.

#### **Compliance with requirement for the exhibition of Canadian programming**

41. Teletoon Canada is currently required to ensure that not less than 60% of the broadcast year, and not less than 60% of the evening broadcast period (6:00 p.m. to midnight), is devoted to Canadian programs.

42. The logs for Teletoon/Télétoon programming in the broadcast year 1999-2000 indicate that the licensee was not in compliance during that broadcast year, with regard to the broadcast of Canadian content. The shortfall was noted during the evening broadcast period on the English-language feed, and during both the evening broadcast period and the broadcast day on the French-language feed.
43. Teletoon Canada admitted that the shortfall had occurred, and submitted that the reason it had not met its Canadian content requirements was due to the purchase of programming believed to be Canadian, from CINAR. It was subsequently discovered that the programming did not qualify as Canadian programming. Teletoon Canada argued that, because the programs were purchased in good faith, and that CINAR was in breach of its contract with the licensee, Teletoon Canada should not be sanctioned for the shortfall.
44. The licensee outlined the following safeguards, put in place to ensure that a similar situation does not arise in the future:
- Deal memos and long-form program licence agreements (PLAs) contain clear and unqualified representations and warranties by the producer/licensor that the program will receive Canadian content certification.
  - PLAs requires the licensor to provide full and final Canadian content certification, and failure to do so would constitute a material breach of contract.
  - In addition to relying on representations and warranties, the licensee will conduct its own analysis of the planned project to verify that it will qualify as Canadian.
  - The licensee will monitor its logs and follow up with producers on a regular basis concerning Canadian content certification numbers.
  - Contracts will clearly stipulate that final payment is contingent upon delivery of final Canadian content certification numbers.
  - The licensee will increase its efforts to ensure that certification of programs is obtained prior to broadcast, by requiring a copy of the licensor's application to certify the project before initial payments are made.
45. Teletoon Canada also indicated that its employees now monitor and track missing Canadian content certification numbers. In addition, at the hearing, the licensee stated that it had removed from Teletoon/Télétoon's schedule any decertified CINAR programming or CINAR programming still awaiting certification.



## **Interventions**

46. Several interveners touched upon Teletoon/Télétoon's non-compliance, and indicated that many broadcasters had been affected by CINAR, and that, in their opinion, no further action on the part of the Commission was necessary. SARTEC took a different view, stating that since CINAR is a shareholder of Teletoon Canada, it should not benefit from a problem it created.

## **The Commission's analysis and determination**

47. The Commission emphasizes that the broadcaster is responsible for ensuring that all programming requirements are fulfilled at all times. Nevertheless, the Commission considers that the present situation is unique.
48. The Commission is satisfied that the shortfall of Canadian content on Teletoon/Télétoon was a result of CINAR's activities, and that the measures now in place will minimize any reoccurrence of non-compliance.

## **French-language production**

### **Interveners**

49. While generally pleased that Teletoon Canada has met and exceeded commitments to new Canadian animation programming, interventions submitted by UDA and SARTEC expressed the view that Teletoon/Télétoon should make a greater commitment to animation production in Quebec.
50. Both UDA and SARTEC suggested that Teletoon/Télétoon should be subject to a requirement that a minimum number of Canadian programs be developed and produced in French to support the animation industry in Quebec.

### **The licensee's reply**

51. At the hearing, Teletoon Canada made the following commitments related to the acquisition of programming produced in the French language:
  - Through Quebec-based industry associations, Teletoon Canada will meet with Quebec-based animation producers and talent, to discuss the overall issues and develop solutions for creating Quebec-based animation. Teletoon Canada will keep the Commission informed of the progress of this initiative.
  - To place a priority on productions that commit to produce the French-language version using Quebec-based talent.
  - To acquire, when available, all French-language dubbed audio tracks created in Quebec for all foreign productions or co-productions, rather than the internationally-dubbed versions, regardless of cost.

- To direct a minimum of one-third of all of Teletoon/Télétoon's script and concept development expenditures to Canadian French-language producers.
- To produce a minimum of 700 new half-hours of Canadian productions, each available in English and in French, over the new licence term.

#### **The Commission's analysis and determination**

52. The Commission notes Teletoon Canada's success in creating new Canadian programming, and the licensee's commitment to a minimum of 700 new half-hours of Canadian production over the new licence term. The Commission recognizes that, since all of the planned production is created in both English and French, the licensee will effectively create 1,400 half-hours of new programming.
53. At the same time, the Commission is of the view that licensees of French-language services, including Teletoon/Télétoon, should strive to provide opportunities to French-language producers from across Canada, and that simply broadcasting in both official languages does not fulfil the obligations of a bilingual broadcaster.
54. Accordingly, the Commission expects the licensee to adhere to its commitments set out above. Also, consistent with the licensee's commitments, the Commission has imposed **conditions of licence**, requiring that Teletoon Canada must acquire, when available, all Canadian-created French-language audio tracks for non-Canadian productions or co-productions that it broadcasts, and that Teletoon Canada direct a minimum of one-third of all script and concept expenditures to Canadian French-language producers. The texts of these conditions of licence are set out in the appendix to this decision.

#### **Canadian independent production**

55. In *Teletoon – Approved*, Decision CRTC 96-598, 4 September 1996 (Decision 96-598), by condition of licence the Commission required that, by the end of the current licence term, 50% of all Canadian programs broadcast on Teletoon/Télétoon be financed by parties other than the licensee, its shareholders, their shareholders or any of their affiliates. In that decision, the Commission also required that, by the end of the licence term, 50% of all expenditures for the development and creation of new programs should be set aside for parties other than the licensee, its shareholders, their shareholders or any of their affiliates. Decision 96-598 also required that the licensee not remit any program development funds to its shareholders or affiliated corporations.
56. Prior to the public hearing, Teletoon Canada submitted a proposal to revise two of the three conditions noted above. The proposed conditions, as revised, are:
- In each broadcast year, a minimum of 50% of Teletoon's expenditures on the acquisition or commissioning of original Canadian programming shall be set aside for parties other than the licensee, its shareholders, their shareholders or any of their affiliates.

- The licensee shall not remit any script and concept development expenditures to its shareholders or affiliated corporations.

### **Interventions**

57. The APFTQ and Productions Pascal Blais submitted that 75% of Canadian programming should come from unrelated producers, and that 75% of expenditures for the development and creation of new programs should be directed to unaffiliated producers. The CFTPA recommended that Teletoon/Télétoon be subject to a requirement that 75% of original Canadian programming come from independent producers.

### **The licensee's reply**

58. Teletoon Canada submitted that the current 50% levels remain appropriate because “the animation industry has been subject to significant volatility” and that “the total supply of animation programming is small, relative to live action programming”.
59. The licensee also stated that the 50% levels are minimums that have been exceeded on occasion, “depending upon the inventory of animation production”. Teletoon Canada maintained that: “...it would not be prudent for the Commission to impose a condition of licence for which compliance may not be possible in all cases”.

### **The Commission's analysis and determination**

60. With respect to expenditures for programming acquired from independent producers, the Commission agrees that requiring the licensee to increase its spending for original, Canadian programming to be broadcast on Teletoon/Télétoon would be inappropriate, given the approach adopted for other specialty services currently under consideration.
61. Accordingly, the Commission is of the view that it is reasonable to require Teletoon Canada, for the duration of the new licence term, to continue to ensure that a minimum of 50% of all expenditures for original, first-run Canadian programming broadcast on Teletoon/Télétoon continues to be directed to non-related producers. A **condition of licence** to this effect is set out in the appendix to this decision.
62. With respect to the exhibition of independently produced programming, consistent with the approach taken in the case of a number of other specialty television undertakings, and consistent with the approach set out in Public Notice 2004-2, the Commission considers that it is reasonable to expect Teletoon Canada, for the duration of the new licence term, to ensure that a minimum of 75% of all original, first-run Canadian programming broadcast is acquired from non-related producers.

## **Regional reflection and production**

63. The licensee stated that, notwithstanding the fact that animation series are typically situated in fictitious or imaginary worlds, the importance of reflecting stories from around the country has always been an important goal. Teletoon Canada indicated that it does this through programming set in a variety of Canadian locations, from British Columbia to Prince Edward Island. In addition, the licensee stated that it acquires programming from smaller production centres across the country. In addition, Teletoon Canada noted that, for Teletoon/Télétoon's French-language feed, it strives to acquire versions of foreign programming that are dubbed using the voice talents of well-known Quebec actors, in order to ensure a distinctly regional flavour.
64. The Commission notes the licensee's efforts to ensure that the programming aired by Teletoon/Télétoon reflects all Canada's regions, and expects it to continue to pursue those efforts. The Commission also expects the licensee to provide opportunities for producers working outside the major production centres to supply programming for the service.

### **"Safe haven"**

65. In Decision 96-598, the Commission noted the licensee's commitment that Teletoon/Télétoon would "create a unique "safe haven" for young children throughout the day", and that Teletoon/Télétoon would "broadcast twelve hours of programming every weekday from 6:00 a.m. to 6:00 p.m. suitable for unsupervised viewing by young children".
66. The Commission notes the licensee's statement that Teletoon Canada will adhere to this commitment throughout the new licence term. The Commission further notes Teletoon Canada's commitment to schedule a minimum of 31.5 hours of advertising-free programming Monday to Friday of each broadcast week, during the hours 6:00 a.m. to 6:00 p.m.

### **Other matters**

67. As part of its renewal application, Teletoon Canada indicated that it would continue to adhere to the commitment noted in Decision 96-598, that "primary responsibility for the development, acquisition and investment in programming for the service will be held by Teletoon's President and the Senior Director of Programming, neither of whom will be employees or principals of any shareholders". The Commission expects the licensee to adhere to its commitment throughout the new licence term.
68. Consistent with the terms set out in Decision 96-598, the Commission requires the licensee to maintain separate program logs for its English-language and French-language feeds. A **condition of licence** to this effect is set out in the appendix to this decision.

## **Cultural diversity**

69. As stated in Public Notice 2004-2, the Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect Canada's ethno-cultural minorities and Aboriginal peoples. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.
70. Teletoon Canada stated its intention to adhere to the cultural plan developed by Astral Media, which sets out specific commitments relating to corporate accountability, reflection of diversity in programming, and community involvement as they relate to presence and portrayal of cultural diversity.
71. The Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in Astral Media's corporate cultural diversity plan. As discussed in Public Notice 2004-2, the Commission further expects the licensee to work with Astral Media to incorporate persons with disabilities into its cultural diversity corporate planning.

## **Employment equity and on-air presence**

72. The Commission's expectations with respect to cultural diversity are over and above its longstanding and more general expectations concerning employment equity and on-air presence. 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 issues in its hiring practices and in all other aspects of its management of human resources.
73. With respect to on-air presence, the Commission also expects the licensees of specialty television services to ensure that the on-air presence of members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) is reflective of Canadian society, and that members of these groups are presented fairly and accurately.
74. The Commission notes that Teletoon/Télétoon has no on-air positions, since almost all of its programming is animated. The Commission, however, notes the licensee's statements that it engages a number of different actors, both male and female, to perform voice-over work for use in Teletoon/Télétoon's animated station identification announcements and other production material. Teletoon Canada further stated that, while it uses more female voices during programs aimed at pre-school age children, it seeks to use a balance of male and female voices, using a variety of different accents and styles.

## Service to persons who are deaf or hard of hearing

75. The Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed captioned programming they broadcast. The Commission generally requires all broadcasters to offer a minimum percentage of closed captioned programs consistent with the nature of their services. Most English-language services must close caption at least 90% of their programming. The closed captioning requirement currently imposed on the French-language programming broadcast by Teletoon/Télétoon and on other French-language services is less than the 90% level generally required of English-language services. This is in recognition of the significantly greater challenges involved in captioning French-language programming.
76. In the present case, the licensee made a commitment to close caption 90% of all English-language programming, broadcast on Teletoon/Télétoon during each broadcast day of the new licence term. Teletoon Canada also made a commitment to immediately close caption 75% of all French-language programming broadcast on Teletoon/Télétoon during each broadcast day, and to increase the amount of closed captioning to 90% of all French-language programming in the sixth year of the new licence term.
77. Consistent with these commitments and with the Commission's general approach for English- and French-language services, the Commission is imposing a **condition of licence** requiring the licensee to close caption 90% of all English-language programming aired during the broadcast day, beginning not later than 1 September 2004. It is also imposing a **condition of licence** requiring the licensee to close caption 75% of all French-language programming aired during the broadcast day beginning not later than 1 September 2004, 80% beginning 1 September 2005, 85% beginning 1 September 2007, and 90% beginning 1 September 2008. The **conditions of licence** are set out in the appendix to this decision.
78. The 90% obligation is based on the recognition that requiring 100% captioning at all times by condition of licence may not be reasonable. Thus, the obligation is designed to provide some flexibility to cover unforeseen circumstances (such as late delivery of captions, technical malfunctions, or the lack of availability of captions for programs acquired outside North America), or programming where captioning may not be feasible, such as third language programming.
79. The Commission expects that, during the new licence term, the licensee will focus on improving the quality, reliability and accuracy of its closed captioning, and work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet their needs.

## Service to persons who are blind or whose vision is impaired

80. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description<sup>2</sup> and video description (also known as described video).<sup>3</sup>
81. In its renewal application, the licensee indicated that Teletoon/Télétoon is not currently technically capable of providing descriptive video. It stated, however, that once a solution is found to the problems related to signal delivery, it would exhibit one hour each month of described programming.
82. Teletoon Canada also stated that it is prepared to provide audio description where appropriate, and made commitments to undertake the necessary upgrades to permit the broadcast of described programming via the SAP channel, to acquire and broadcast the audio described versions of programs wherever possible and to take the necessary steps to ensure that Teletoon/Télétoon's customer service responds to the needs of viewers who have visual impairments.
83. Consistent with its approach as set out in Public Notice 2004-2, and given the nature of the service and the programming it provides, the Commission has determined that it would be appropriate to require the licensee to provide a minimum of two hours of described video programming each week, beginning not later than 1 September 2005, and to increase that amount to a minimum of three hours each week, beginning not later than 1 September 2008. A **condition of licence** to this effect is set out in the appendix to this decision.
84. The Commission notes that, while Teletoon/Télétoon is not currently equipped to provide described video, the requirement to provide a minimum of two hours per week of described video programming will not take effect until 1 September 2005. This should provide sufficient time for the licensee to develop programming plans and make the necessary system upgrades.
85. The Commission further expects that, during the new licence term, the licensee will:
  - provide audio description wherever appropriate;
  - acquire and broadcast the described versions of a program wherever possible; and

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<sup>2</sup> Audio description involves the provision of basic voice-overs of textual or graphic information displayed on the screen. A broadcaster providing audio description will, for example, not simply display sports scores on the screen, but also read them aloud so that people who are visually impaired can receive the information.

<sup>3</sup> Video description, or described video, consists of narrative descriptions of a program's key visual elements so that people who are visually impaired are able to form a mental picture of what is occurring on the screen.

- take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

### **Programming delivered across time zones**

86. The Commission notes that Teletoon/Télétoon is available on three feeds: a French-language signal originating in the Eastern time zone and two English-language signals, one originating in the Eastern time zone and one in the Pacific time zone. Nevertheless, as discussed in Public Notice 2004-2, the Commission expects the licensee to continue to demonstrate responsibility in the scheduling of programming intended for adult audiences, taking into account the time zone differences between where the program originates and where it is received.

### **Compliance with industry codes**

87. In accordance with its usual practice for specialty television services, the Commission is imposing **conditions of licence** requiring the licensee to adhere to industry codes related to sex-role portrayal, advertising to children, and the depiction of violence in television programming.

Secretary General

*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>*



## Appendix to Broadcasting Decision CRTC 2004-12

### Conditions of licence

1. (a) The licensee shall provide a national specialty television service devoted to animation and animation-related programs, with both English- and French-language feeds.
  - (b) The programming must be drawn exclusively from the following categories, as set out in section 6 of Schedule I of the *Specialty Services Regulations, 1990*, as amended from time to time:
    - 5 (b) Informal education/Recreation and leisure
    - 7 (a) Ongoing dramatic series
    - 7 (b) Ongoing comedy series (sitcoms)
    - 7 (c) Specials, mini-series or made-for-TV feature films
    - 7 (d) Theatrical feature films aired on TV
    - 7 (e) Animated television programs and films
    - 12 Interstitials
    - 13 Public service announcements
    - 14 Infomercials, promotional and corporate videos
  - (c) The licensee shall devote not more than 5% of the broadcast year to programs from categories 12, 13 and 14. In the remainder of the broadcast year, a minimum of 90% of all programs shall be animated programming drawn from categories 7(d) and 7(e). All programs provided by the licensee shall consist exclusively of animation and animation-related programming, with the exception of those drawn from categories 12, 13 and 14.
2. (a) In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 60% of the broadcast day, and not less than 60% of the peak viewing period.
  - (b) Over the broadcast year, during each broadcast day the licensee shall devote a minimum of one hour between 8:00 p.m. and midnight to the distribution of Canadian programs.
  - (c) The licensee shall schedule its Canadian programs reasonably throughout the broadcast day.

3. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993 and in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993:
- (a) In the broadcast year ending 31 August 2004, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 40% of the gross revenues derived from the operation of this service during the previous broadcast year.
  - (b) In the broadcast year beginning 1 September 2004, and in each subsequent broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 47% of the gross revenues derived from the operation of this service during the previous broadcast year.
  - (c) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to five percent (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 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.
  - (d) In each broadcast year of the licence term where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
    - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
    - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
  - (e) Notwithstanding paragraphs (c) and (d) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
4. (a) Subject to subsection (b), the licensee shall not distribute more than twelve (12) minutes of advertising material during each clock hour.

- (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) The licensee shall not distribute any paid advertising material other than paid national advertising.
5. In each broadcast year, a minimum of 50% of all expenditures for the acquisition or commissioning of original first-run Canadian programming shall be set aside for non-related producers.
6. (a) The licensee shall not remit any script and concept development expenditures to its shareholders or affiliated corporations.
- (b) The licensee shall direct a minimum of one-third of all script and concept development expenditures to Canadian French-language producers.
7. The licensee shall charge each exhibitor of this service a maximum monthly wholesale rate of \$0.35 per subscriber, where the service is carried as part of the basic service.
8. (a) The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast day on the English-language feeds, beginning not later than 1 September 2004.
- (b) The licensee shall provide closed captioning for the following percentages of all programs aired during the broadcast day on the French-language feed:
- Beginning not later than 1 September 2004: 75%
  - Beginning not later than 1 September 2005: 80%
  - Beginning not later than 1 September 2007: 85%
  - Beginning not later than 1 September 2008: 90%
9. In each broadcast year of the licence term, the licensee shall provide a minimum of two hours of described video programming during each broadcast week, beginning not later than 1 September 2005, increasing to a minimum of three hours beginning not later than 1 September 2008. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service.

10. The licensee shall acquire, when available, all French-language audio-tracks created in Canada for non-Canadian productions or for co-productions that it broadcasts.
11. The licensee shall maintain separate program logs for its English-language and French-language feeds.
12. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council (CBSC).
13. The licensee shall adhere to the provisions of the CAB's *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
14. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the CAB's *Voluntary code regarding violence in television programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the CBSC.

For the purpose of these conditions, the terms "broadcast day", "broadcast month", "broadcast year", and "clock hour" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*. The term "broadcast week" shall have the same meaning as that set out in the *Radio Regulations, 1986*. "Paid national advertising" shall mean advertising material as defined in the *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service. "Peak viewing period" means the period 4:00 p.m. to 10:00 p.m. "Animation-related programming" means:

- i. programs that were demonstrably originally inspired by animated or illustrated characters or concepts.
- ii. Programs that contain animation and non-animation formats within a single program.
- iii. Programs about animation or animators/illustrators.