



Broadcasting Decision CRTC 2004-7

Ottawa, 21 January 2004

MusiquePlus Inc.
Across Canada

*Application 2002-0893-5
Public Hearing in the National Capital Region
26 May 2003*

MusiMax – Licence renewal

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as MusiMax, 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 MusiquePlus Inc. for the renewal of the broadcasting licence for the national, French-language specialty television service known as MusiMax.
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 nine interventions regarding MusiMax's licence renewal application. Three of these interveners submitted comments, while six opposed the amendments proposed by the licensee as part of its licence renewal application. The concerns raised by the interveners related specifically to this application are discussed below.
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 MusiMax, from 1 March 2004 to 31 August 2010.¹ The licence will be subject to the conditions specified therein and to the conditions set out in the appendix to this decision.
6. As part of its licence renewal application, the licensee requested amendments to its condition of licence pertaining to its nature of service. Specifically, the amendments would modify its wording, add program categories, reduce the number of music video programs and reduce the percentage of Canadian content in the evening broadcast period. The proposed amendments are discussed below.

Nature of service

7. As part of its licence renewal application, the licensee requested amendments to the current condition of licence describing its nature of service, that would:
 - replace the phrase "... devoted to music ..." with the phrase "...that will be devoted predominantly to music ...";
 - add to the phrase "... devoted to music in all its forms ..." the phrase "... its works, its history and personalities ...";
 - introduce the flexibility to broadcast up to 10% of programs that have no connection with music; and
 - add the following four program categories to the list of program categories that can be broadcast on the service: 2(a) Analysis and interpretation, 2(b) Long-form documentary, 7(c) Specials, mini-series, or made-for-TV feature films, and 9 Variety.
8. MusiMax indicated that the proposed wording would provide the necessary flexibility to meet the needs of its audience by offering programs in other areas of cultural activity as a complement to its primary programming.

Interventions

9. The Union des artistes (UDA), the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), the Société des auteurs de radio, télévision et cinéma (SARTEC), the Canadian Broadcasting Corporation (CBC), ARTV inc. and TQS inc. (TQS) all opposed the licensee's proposed amendments. The interveners expressed concern that these changes might permanently alter MusiMax's nature of service and result in MusiMax's impinging on the mandate of other French-language conventional and specialty television services.

¹ In *Administrative renewals*, Broadcasting Decision CRTC 2003-290, 21 July 2003, the Commission granted a six-month administrative renewal to MusiMax, from 1 September 2003 to 29 February 2004.

The licensee's reply

10. The licensee stated that the purpose of the proposed amendments was not to fundamentally alter the nature of its service but to give it a minimum of flexibility. The licensee added that, with the proposed amendments, MusiMax would not cease to be a service whose programming focuses essentially on music in all its forms.

The Commission's analysis and determination

11. The Commission finds that, in addition to providing the flexibility to broadcast up to 10% of programs having no connection with music, the proposed addition of the phrase "... that will be devoted predominantly to music ...," would enable the licensee to broaden MusiMax's nature of service and would not help to promote the original orientation of this service: the presentation of music in all its forms. An authorization to broadcast programs having no connection with music would enable MusiMax to compete with certain program genres already occupied by other Canadian conventional or specialty television broadcasters and would represent a departure from the Commission's policy of authorizing only one service per genre. Accordingly, the Commission **denies** the two aforementioned amendments.
12. However, the Commission **approves** the proposed addition of the phrase "... its works, its history and personalities ...". The Commission also **approves** the addition of program categories 2(a), 2(b), 7(c) and 9, provided that the programs are related to the nature of service: music in all its forms, its works, its history and personalities. In addition, the licensee shall, by **condition of licence**, devote no more than 15% of the broadcast year to programs relating to music in all its forms, its works, its history and personalities, drawn from category 7.
13. The licensee also proposed three other amendments related to its nature of service:
 - to decrease from 65% to 50% the number of category 8(c) Music video programs that it must broadcast;
 - to delete the condition of licence requiring that all programs broadcast by MusiMax shall be subject to a music-to-spoken word ratio of no less than 60:40; and
 - to replace the current requirement that it not broadcast more than one music-related feature film in each broadcast week with a requirement that it not broadcast more than 52 music-related feature films in each broadcast year.

Interventions

14. Société de télédiffusion du Québec, ADISQ and TQS opposed the requested decrease in the percentage of programs that must be drawn from category 8(c). According to these interveners, this amendment would fundamentally alter MusiMax's nature of service by reducing the number of French-language and Canadian music videos that it broadcasts and enabling it to compete directly with conventional television. According to ADISQ, TQS and CBC, it is essential to maintain the requirement that all programs broadcast by MusiMax shall be subject to a music-to-spoken word ratio of not less than 60:40, so as to ensure that MusiMax remains a specialty service centred on music videos and music in general.

The licensee's reply

15. According to the licensee, these amendments would give it more flexibility to provide the adult Francophone audience for MusiMax with programming that is more varied and less centred on music videos, while also lightening the service's administrative burden. The licensee added that its request to reduce the percentage of music video programs reflects the state of the supply of music videos aimed at its target audience. This supply is far more limited than the supply of music videos aimed at younger audiences.

The Commission's analysis and determination

16. The Commission is of the view that the proposed reduction in the number of music video programs, together with the preceding denial of MusiMax's request to broadcast programs that have no connection with music, will enable the licensee to offer programming that better reflects the tastes of its target audience while continuing to showcase artists and new programs that are focused on music. Accordingly, the Commission **approves** the request to reduce the number of music video programs to 50% from 65%. The licensee shall, by **condition of licence**, ensure that it draws not less than 50% of its music video programs from categories 8(b) Music video clips and 8(c) Music video programs, in the course of each broadcast year.

17. The Commission also considers that, in the case of MusiMax, the music-to-spoken word ratio of 60:40 is hard to measure and considerably limits the licensee's choice of programs. The Commission is confident that MusiMax's nature of service is specific enough to ensure that its programming will reflect the service's musical orientation. As for the proposal regarding feature films, the Commission notes that the total number of feature films broadcast over the year will not be changed and that the proposed amendment will give the licensee additional flexibility when broadcasting certain theme events. The Commission therefore **approves** the request to delete the requirement regarding the 60:40 ratio of music-to-spoken word. The Commission also **approves** the proposed amendment regarding the broadcast of feature films. The licensee shall therefore, by **condition of licence**, broadcast no more than 52 feature films each broadcast year and shall ensure that the feature films it broadcasts are related to its nature of service. The Commission reminds the licensee that all programs broadcast must conform to the definition of MusiMax's nature of service.
18. The Commission considers that the aforementioned measures, which structure the nature of service that MusiMax can offer in such a way that all programming will be devoted to music in all its forms, its works, its history, and personalities, and which limit to no more than 15% of the broadcast year the music-related programs that can be drawn from category 7, will help to preserve MusiMax's musical orientation and address the interveners' concerns. The condition of licence on the nature of service is set out in the appendix to this decision.

Canadian content

19. The licensee proposed to decrease its percentage of Canadian content during the evening broadcast period from 60% to 50%. The licensee submitted that this proposed reduction in Canadian content in the evening would enable it to enhance the quality of its programming, reduce its repeat factor, and increase the average budget allocated for each hour of original Canadian programming.

Interventions

20. Télé-Québec, ADISQ, UDA and CBC opposed this proposal. The interveners argued that this change would result in an increase in the number of hours of foreign programming in prime time and that the licensee has not demonstrated that its situation justified any special treatment.

The licensee's reply

21. The licensee responded that the proposed reduction in the evening percentage of Canadian content is intended to increase the diversity, the quality, and the drawing power of its Canadian programming. It added that, while the number of hours of Canadian programming would be reduced, the level of expenditures on Canadian programming would, at a minimum, remain the same.

The Commission's analysis and determination

22. The Commission has approved a 15% reduction in music video content earlier in this decision. It is concerned that, if it were now to approve a reduction in Canadian content during the evening broadcast period, these music video programs might be replaced largely by non-Canadian programs. The Commission is also of the view that maintaining the level of Canadian content in the evening would be an incentive for the licensee to offer high quality Canadian programming in order to remain competitive in prime time. Accordingly, the Commission **denies** the proposal to reduce from 60% to 50% the percentage of Canadian content during the evening broadcast period.

Broadcasting of Canadian music video clips and French-language music video clips

23. The licensee must currently ensure that at least 30% of the total number of music video clips that Musimax exhibits during each broadcast week are Canadian music video clips, and that at least 30% are French-language music video clips. The licensee indicated it did not wish to increase the percentage of Canadian music video clips, given their relatively limited availability. The licensee also indicated, however, that it would be prepared to accept an increase in the percentage of French-language music video clips, from 30% to 35%.

Interventions

24. UDA and CBC favoured an increase in the percentage of French-language music video clips from 30% to 35% if the Commission were going to approve the proposed 15% decrease in music video programs. ADISQ also favoured this increase, without any reduction in music video programs.

The Commission's analysis and determination

25. Given that the supply of music video clips aimed at MusiMax's target audience is limited, and that it would be preferable to avoid overexposing them, the Commission will not increase the requirement regarding the exhibition of Canadian music video clips. However, in accordance with the licensee's statement, and by **condition of licence**, at least 35% of the total number of music video clips that the licensee broadcasts during each broadcast week shall be French-language music video clips.
26. The Commission encourages the licensee to exceed the minimum requirements of 30% for Canadian music videos and 35% for French-language music video clips specified in the conditions of licence set out in the appendix, according to the supply of music video clips available.

Canadian programming expenditures

27. In Broadcasting Notice of Public Hearing CRTC 2003-3, 21 March 2003, the Commission stated the following:

The Commission will examine the appropriateness of increasing the licensee's contributions to Canadian programming, in terms of the exhibition of Canadian content and/or expenditure commitments, where existing commitments to Canadian programming and/or to Canadian programming expenditures are low in relation to other specialty services, or where the financial situation or nature of service warrants it.

28. The Commission notes that MusiMax is required, by condition of licence, to contribute at least 5% of its gross revenues to MaxFACT for the creation and production of Canadian music video clips. MusiMax is not currently subject to a condition of licence regarding expenditures on Canadian programming.
29. MusiMax's expenditures on Canadian programming represented 14% of its gross revenues during the current licence period and averaged 18% of its gross revenues over the past two years. At the hearing, the licensee made a commitment to devote, by condition of licence, in addition to the current requirement of 5% to MaxFACT, at least 18% of the undertaking's gross revenues from the previous year to investing in or acquiring Canadian programming during the new licence term, equating to a total of 23% of the undertaking's gross revenues. This commitment was made in the context of the licensee's request to reduce its percentage of music video programs from 65% to 50% and was designed to ensure that this request would not result in a reduction in the direct expenditures allocated by MusiMax to the acquisition and production of Canadian programs.

Interventions

30. Several interveners, including ADISQ, Cogeco Cable Inc. and UDA, pointed out the significant growth in revenues and in profit before interest and tax (PBIT) that Canadian specialty services as a whole have experienced since 1996. Télé-Québec and SARTEC pointed out, in particular, the sound financial health of MusiMax.

The licensee's reply

31. The licensee disputed the interveners' conclusions with regard to the financial situation of MusiMax in particular and of specialty services as a whole. The licensee submitted that, given the current financial situation of MusiMax and MusiquePlus Inc. compared with that of the other specialty services, there is no objective economic reason that would justify imposing an increase in MusiMax's Canadian programming expenditures at the end of its first licence term. According to the licensee, before imposing additional financial obligations on the specialty services, the Commission should consider the overall economic situation and its impact on the ability of licensees with multiple licences to adequately support the development of all the specialty services.

The Commission's analysis and determination

32. Following the discussions held on this subject at the public hearing and its review of the financial capacity of MusiMax and of the licensee, MusiquePlus Inc., the Commission is of the view that the licensee is in a position to increase its Canadian programming expenditures. In making this determination, the Commission has taken a number of factors into account.
33. The Commission notes that the only requirement to which MusiMax is currently subject is its contribution to MaxFACT. Considering the amendments authorized in this decision, and in particular the one that allows the licensee to reduce to 50% from 65% the number of music video programs broadcast by MusiMax, the Commission considers it appropriate to add a new requirement, similar to the one imposed on the other specialty services, and based on Canadian programming expenditures as a percentage of the annual gross revenues of the undertaking.
34. Over the last two years of operation of this service, the financial data have shown a healthy level of profitability. Moreover, the licensee, MusiquePlus Inc., is in very good financial health. It has no long-term debt, an excellent working capital ratio, and an enviable net rate of return on shareholders' equity. The Commission also notes that the licensee is owned equally by two major Canadian broadcasting groups that operate in the specialty television services industry: Astral Broadcasting Group Inc. and CHUM Limited.
35. Consistent with the foregoing, and considering the review of the financial situation of the service and the licensee, the Commission considers that an expenditure on Canadian programming of 31% of gross revenues is appropriate. The licensee shall, therefore, by **condition of licence**, devote to the investment in or the acquisition of Canadian programs during each broadcast year, beginning not later than 1 September 2004, at least 31% of the previous year's gross revenues. This percentage includes the licensee's 5% contribution to MaxFACT, which is discussed in the following section. This condition of licence is set out in the appendix to this decision.
36. The Commission encourages the licensee to contribute significantly to the independent production industry.

Contribution to the development and the production of Canadian music video clips

37. The licensee is currently required to allocate to MaxFACT, for the development and production of Canadian music video clips, at least 5% of the previous year's gross revenues. The licensee has proposed to maintain its contribution with regard to MaxFACT for the new licence term. MaxFACT is a music video production fund that was set up by the licensee when it launched MusiMax.

Interventions

38. ADISQ proposed increasing MusiMax's contribution to the production of French-language Canadian music video clips to 6% from 5%, considering the profitability of the undertaking. ADISQ also stated that the calculation of the contribution should include all revenues related to the presence of the service on the Canadian broadcasting system. Revenues generated by the Internet should be excluded.

The licensee's reply

39. The licensee argued that the financial situation of MusiMax and MusiquePlus Inc. did not justify an increase in its contribution to the production of Canadian music video clips.

The Commission's analysis and determination

40. Considering the aforementioned new requirement regarding MusiMax's contribution to the investment in or the acquisition of Canadian programs, the Commission is of the view that there is no need to increase MusiMax's contribution to the production of Canadian music video clips. The licensee shall therefore continue to be required, by **condition of licence**, to allocate to MaxFACT, for the development and production of Canadian music video clips, at least 5% of the previous year's gross revenues.
41. With respect to ADISQ's comment concerning the calculation of the licensee's contribution, the Commission finds that the licensee has not been including all of its revenues in calculating its contribution. The Commission reminds the licensee that for the purposes of applying the appended conditions of licence relating to the calculation of MusiMax's contributions to the investment in or the acquisition of Canadian programs and to the development and production of Canadian music video clips, gross revenues include all revenues related to the presence of the service on Canadian broadcast airwaves, except revenues generated by the Internet.

Regional reflection and production

42. The Commission expects the licensee to ensure that the programming aired by MusiMax reflects all of Canada's regions. The Commission also expects the licensee to provide opportunities for producers working outside the major production centres to supply programming for the service.

Cultural diversity

43. 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.

44. The licensee stated that MusiMax showcases artists of all cultural origins in its music programming, and that it intends to continue to do so. The Commission notes the initiatives that the licensee has taken in this regard. During the current licence term, the licensee filed a corporate cultural diversity plan with the Commission setting 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.
45. The Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in its corporate cultural diversity plan. As discussed in Public Notice 2004-2, the Commission further expects the licensee to incorporate persons with disabilities into its cultural diversity corporate planning and to ensure that this is reflected in its annual reports on cultural diversity, beginning with the report to be filed in December 2004.

Employment equity and on-air presence

46. Pursuant to section 5(4) of the *Broadcasting Act*, the Commission does not regulate or supervise matters concerning employment equity in relation to broadcasting undertakings with more than 100 employees, as they are subject to the *Employment Equity Act*. However, the Commission continues to regulate matters such as on-air presence.
47. The Commission 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. The Commission also expects the licensee to take steps during the new licence term to address any gap in the on-air presence of members of the four designated groups on MusiMax.

Service to persons who are deaf or hard of hearing

48. 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. The closed captioning requirement imposed on 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.

49. As part of its application for the renewal of the licence for MusiMax, the licensee agreed, as a condition of licence, to close caption a minimum of 50% of all programming, except music video clips, beginning not later than 1 September 2006 and continuing throughout the remainder of the licence term. Following clarifications, the licensee also agreed to a condition of licence whereby at least 90% of the prerecorded programs it produces, other than music video clips, will be closed captioned by the end of the new licence term.
50. Consistent with these commitments and with the Commission's general approach for French-language services, the Commission requires the licensee, by **condition of licence**, to close caption at least 50% of all programs aired during the broadcast day, beginning not later than 1 September 2006. The Commission also requires, by **condition of licence**, that at least 90% of the prerecorded programs produced by the licensee, other than music video clips, be closed captioned, beginning not later than 1 September 2009. These two conditions of licence are set out in the appendix to this decision.
51. The Commission expects the licensee to ensure that all music video clips produced with the financial support of MaxFACT are captioned throughout the licence term. The Commission encourages the licensee to caption all music video clips aired by MusiMax.
52. The Commission further advises the licensee that, at the time of its next licence renewal, the Commission intends to require that this service provide captioning for a minimum of 90% of all programming, other than music video clips. Accordingly, the Commission encourages the licensee, by the time of its next licence renewal, to caption 90% of all programming aired during the broadcast day.
53. 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

54. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description² and video description (also known as described video).³

² 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.

³ 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.

55. The licensee intends to make its program hosts more aware of the benefits that persons whose vision is impaired receive from having the program host provide, when possible and appropriate, an audio description of certain elements of information that appear on screen in textual or graphic form. The licensee also indicated that it is closely following technical developments that will enable it to give persons whose vision is impaired better access to Canadian programming services. It also intends to participate in the industry forums where these issues will be examined.
56. The Commission expects that, during the new licence term, the licensee will:
- provide audio description wherever appropriate;
 - acquire and broadcast the described version of a program wherever possible; and
 - 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

57. As discussed in Public Notice 2004-2, the Commission expects the licensee to demonstrate responsibility in the scheduling of programming intended for adult audiences, taking into account time zone differences between where the program originates and where it is received.

Compliance with industry codes

58. 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 2004-7

Conditions of licence

1. (a) The licensee shall provide a national French-language specialty television service designed for an adult audience and devoted to music in all its forms, its works, its history and personalities.
- (b) At least 90% of the programming shall 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:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 7 (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - 8 (a) Music and dance other than music video programs or clips
 - (b) Music video clips
 - (c) Music video programs
 - 9 Variety
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
- (c) The licensee shall devote no more than 15% of the broadcast year to programs relating to music in all its forms, its works, its history and personalities, drawn from category 7 Drama and comedy.
- (d) The licensee shall devote at least 50% of each broadcast year to programs drawn from categories 8(b) and 8(c).
- (e) The licensee shall not broadcast more than 14 hours of programs drawn from category 11 each broadcast week.
- (f) The licensee shall broadcast not more than 52 music-related feature films in each broadcast year. Each film may be broadcast only once during the evening broadcast period, but it may be repeated up to three (3) times in other time periods during the same week.
- (g) All category 7 programs broadcast by the licensee shall be related to the world of music or spotlight a personality from the world of music.

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 evening broadcast period.
 - (b) Not less than 30% of the total number of music video clips exhibited by the licensee during each broadcast week shall be Canadian music video clips.
 - (c) Not less than 35% of the total number of music video clips exhibited by the licensee during each broadcast week shall be in the French language.
 - (d) The licensee shall schedule its Canadian and French-language music video clips evenly throughout the broadcast week and in a reasonable manner throughout each 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 contribute to MaxFACT, for the development and production of Canadian music videos, not less than 5% of the previous broadcast year's gross revenues derived from the operation of its service.
 - (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 31%, including 5% to MaxFACT, 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.
 - (d) In addition to the twelve (12) minutes of advertising material referred to in subsection (a), the licensee may broadcast partisan political advertising during an election period.
5. The licensee shall charge each exhibitor of this service a maximum wholesale rate of \$0.15 per subscriber per month, where the service is carried as part of the basic service.
6. The licensee shall provide closed captioning for not less than 50% of all programs other than music video clips aired during the broadcast day, beginning not later than 1 September 2006.
7. The licensee shall provide closed captioning for not less than 90% of prerecorded programs other than music video clips beginning not later than 1 September 2009.
8. 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).

9. 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.
10. 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 term "broadcast day" shall mean a 24-hour day commencing at 00:00:01 each day, or any other period approved by the Commission; the terms "broadcast month," "broadcast year," "clock hour" and "evening broadcast period" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*; the term "broadcast week" shall mean seven consecutive broadcast days beginning on a Friday; and "paid national advertising" shall mean advertising material as defined under the *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service.