



## Broadcasting Decision CRTC 2004-18

Ottawa, 21 January 2004

**Global Communications Limited and Prime Television Holdco Inc.,  
partners in Prime TV, general partnership**  
Across Canada

*Application 2002-0939-7*

*Public Hearing in the National Capital Region*

*26 May 2003*

### **Prime TV – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Prime TV, 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 Global Communications Limited and Prime Television Holdco Inc., partners in Prime TV, general partnership (Global) for the renewal of the broadcasting licence for the national, English-language, specialty television service known as Prime TV.
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 290 letters specifically expressing support for the application and six expressing opposition to specific elements of the application. The concerns raised by the interveners related specifically to this application are discussed in the various sections of 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 Prime TV, 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 Prime TV under the same terms and conditions as the existing licence, with the exception of proposed changes to the requirements related to the dates of the copyright of programming broadcast on the service and the addition of category 3 Reporting and actualities to the list of categories from which Prime TV may draw its programming.

### **Expenditures on Canadian programming**

7. In each year of the current licence term, Global 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 Prime TV.
8. During the licence renewal process, Global was asked to comment on the potential impact of an increase in its Canadian programming expenditures (CPE) from the current level. The licensee indicated that an increase in its spending obligation would reduce its profit to an extent that would be excessive compared to other services that had been licensed at the same time as Prime TV.
9. Global also stated that it would not be appropriate to change spending requirements at this time, arguing that it would create inequities in the system, since other recently renewed specialty services were not required to increase their spending levels.
10. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been in the range of 36-40%. Taking this into account, and consistent with the approach described in Public Notice 2004-2, the Commission has determined that an increase of six percentage points is appropriate. Accordingly, the Commission is requiring the licensee, in each year of the licence term, to expend a minimum of 46% 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.

### **Nature of service**

#### **Copyright limits**

11. Currently, Prime TV's licence is subject to the condition that any dramatic television series broadcast on the service shall have been copyrighted at least ten years prior to the broadcast year in which it is aired on Prime TV.

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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 Prime TV, from 1 September 2003 to 29 February 2004.

12. Global proposed that Canadian programming drawn from 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(f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy would have been copyrighted at least three years prior to broadcast for programs no longer in production, and five years for those programs still being produced. The licensee stated that, given the limited number of Canadian drama series available that are ten or more years old, it is severely restricted in the amount of Canadian drama it is able to broadcast. It argued that the proposed change would allow it to better serve the needs of a mature, discerning audience.

*Interventions*

13. Interventions submitted by Alliance Atlantis Broadcasting Inc. (Alliance Atlantis), CTV Inc. and CHUM Limited (CHUM) opposed the proposal. All three interveners expressed concern that the proposed amendment would permit Prime TV to become more competitive with other existing specialty services and thus lessen diversity in the system.
14. In addition, Alliance Atlantis stated that the change would erode the principles underlying the licensing of specialty services and would give Global an unfair advantage when negotiating rights to programming. CTV Inc. added that the amendment would fundamentally change the nature of Prime TV's service, and CHUM indicated that the proposed change would restrict access by other services to programming and possibly risk those services' ability to meet their Canadian content obligations.

*The licensee's reply*

15. In reply to the interveners' concerns, Global stated that, while the change could lead to some additional competition for programming rights, it was of the view that the increase would not be significant. It also argued that the proposed amendment would not alter the service's focus on programming of interest to adults over 50 since any given program would not necessarily be attractive to more mature viewers, simply because it was produced before a specific date.
16. At the hearing, the licensee stated that the proposed copyright limits were chosen to take advantage of better production values than the current condition allows. The licensee added that, because it must acquire the rights to an entire series before it is broadcast, the length of time it must wait before broadcast is actually longer than ten years.
17. Global indicated further that the proposed change would not represent a significant shift in Prime TV's nature of service because the proposal would affect only Canadian drama and would represent no more than 20% of the program schedule.
18. In addition, Global stated that, in order to diminish any potential negative effects of the proposed change, it would not acquire exclusive rights, and would not commission original drama. The licensee also indicated that any additional Canadian drama programming would not replace Canadian information programming.

*The Commission's analysis and determination*

19. In *Prime TV – Approved*, Decision CRTC 96-604, 4 September 1996 (Decision 96-604), and in Decision CRTC 99-546, 17 December 1999, which denied an application to eliminate the copyright restrictions on the programming on Prime TV, the Commission noted that it had licensed Prime TV as a specialty service directed towards men and women 50 years of age and over. The programming was described as including a mix of new information programs of interest to the target audience and "entertainment programs from the past". Essentially all of the information programs would be Canadian, while most of the entertainment programs would be foreign.
20. The Commission is of the view that the copyright restriction on drama programming broadcast by Prime TV is an important element that distinguishes Prime TV from other specialty services. The Commission is concerned that the proposed change to the condition regarding the copyright date of programs that may be broadcast on Prime TV would broaden the nature of the service unduly and seriously compromise its distinctiveness. The Commission is also of the view that the proposed amendment could have a significant impact on the ability of other specialty services that rely on second-window programming to meet their programming obligations. Accordingly, the proposed licence amendment is **denied**.

**Addition of category 3 Reporting and actualities**

21. As part of its licence renewal application, the licensee also requested an amendment to its current condition of licence describing the nature of its service, in order to add program category 3 Reporting and actualities to the list of categories from which it may draw programming. Global proposed that, if the amendment were approved, no more than 10% of Prime TV's programming each year would be drawn from category 3.
22. In support of its request, Global stated that the addition of category 3 programming would allow the broadcast of fundraising programs as well as conferences, political conventions and political debates of interest to those aged 50 and over. There were no interventions on this matter.
23. The Commission is satisfied that the addition of material from category 3 would be consistent with Prime TV's nature of service, particularly given the limitation proposed by the licensee for programming from category 3.
24. Accordingly, the Commission **approves** the licensee's request and adds program category 3 to the list of categories from which Prime TV may draw its programming. The **condition of licence** on the nature of service is set out in the appendix to this decision, and incorporates a limitation on the use of material from category 3.

### **Canadian independent production**

25. In Decision 96-604, the Commission set out its expectation that the licensee of Prime TV would devote 65% of all Canadian program expenditures to co-productions, at least 50% of which would be produced in cooperation with independent producers.
26. In its intervention in support of Prime TV's licence renewal, the Canadian Film and Television Production Association (CFTPA) suggested that a more appropriate expectation for independent production on Prime TV would be 75% of all Canadian programming.
27. At the hearing, Global proposed that over the new licence term, Prime TV would direct 75% of its expenditures on Canadian programming (excluding news and public affairs programming) to independent producers.
28. The Commission is of the view that a commitment to independent production based on expenditures will allow Prime TV to maintain flexibility while ensuring that Canadian independent production is supported.
29. Based on the above, the Commission considers that it is reasonable to expect Global, for the duration of the new licence term, to ensure that a minimum of 75% of all expenditures for Canadian programming broadcast on Prime TV, other than news and public affairs, is directed to non-related producers.

### **Regional reflection and production**

30. In its renewal application, Global provided examples of regional reflection in the programming broadcast on Prime TV, including documentaries developed to reflect all regions of the country with special appeal for Prime TV's mature audience. Global stated that it currently works with producers in various provinces on the production of series and documentaries. The licensee further indicated that acquisitions and co-productions of projects from producers across the country would continue to play a vital role in the shaping of the Prime TV schedule.
31. The Commission notes the licensee's initiatives in this regard and expects Global to continue to ensure that the programming aired by Prime TV 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**

32. 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.

33. The Commission notes that Prime TV is subject to the Global corporate cultural diversity plan, 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. The Commission expects the licensee to continue to contribute to cultural diversity and to implement the commitments set out in Global's 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**

34. 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.
35. 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.
36. The Commission further expects Global 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 Prime TV.

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

37. 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.
38. In the present case, the licensee made a commitment to close caption 90% of all programming broadcast on Prime TV during each broadcast day of the new licence term.
39. Consistent with this commitment and with the Commission's general approach for English-language services, the Commission is imposing a **condition of licence** requiring the licensee to close caption 90% of all programming aired during the broadcast day, beginning not later than 1 September 2004. The condition of licence is set out in the appendix to this decision.

40. 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.
41. 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**

42. 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>
43. During the licence renewal process, Global voluntarily committed to a condition of licence which exactly mirrors the condition of licence for described video on Global and CTV Television Inc.'s television stations.
44. Consistent with this commitment and with the Commission's approach for services offering drama-based programming as set out in Public Notice 2004-2, and given the nature of the service and the programming offered, 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.
45. 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
  - take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.

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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.

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

46. The Commission notes that the licensee already provides a time-shifted signal. 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**

47. 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 2004-18

### Conditions of licence

1. (a) The licensee shall provide a national, English-language specialty television service consisting of programs of particular interest to adults over 50 years of age.
- (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:
  - 1 News
  - 2 (a) Analysis and interpretation
  - (b) Long form documentary
  - 3 Reporting and actualities
  - 5 (b) Informal education/Recreation and leisure
  - 6 (a) Professional sports
  - (b) Amateur sports
  - 7 Drama and comedy
    - (a) Ongoing dramatic series
    - (b) Ongoing comedy series (sitcoms)
    - (c) Specials, mini-series or made-for-TV feature films
    - (d) Theatrical feature films aired on TV
    - (e) Animated television programs and films
    - (f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy
    - (g) Other drama
  - 8 (a) Music and dance other than music video programs or clips
  - (b) Music video clips
  - (c) Music video programs
  - 9 Variety
  - 10 Game shows
  - 11 General entertainment and human interest
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
- (c) The television series in categories 7(a),(b),(c), and (f) broadcast by the licensee shall have been copyrighted at least ten years prior to the broadcast year in which they are aired by the service.
- (d) The feature films in category 7(d) broadcast by the licensee shall have been copyrighted at least 25 years prior to the broadcast year in which they are aired by the service.

- (e) The licensee shall not broadcast live coverage of sporting events.
  - (f) In each broadcast year, the licensee shall not devote more than 10% of the broadcast day to programs drawn from category 3.
2. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 50% of the broadcast day, and not less than 50% of the evening broadcast period.
  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 46% 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 minutes of advertising 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 monthly wholesale rate of \$0.25 per subscriber, where the service is carried as part of the basic service.
  6. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast day, beginning not later than 1 September 2004.
  7. 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.
  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 8:00 a.m. each day, or any other period approved by the Commission; and 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 have the same meaning as that set out in the *Radio Regulations, 1986*. The term "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.