



## Broadcasting Decision CRTC 2005-441

Ottawa, 31 August 2005

**Astral Broadcasting Group Inc.**  
Across Canada

*Application 2004-1434-2  
Public Hearing in the National Capital Region  
16 May 2005*

### **Canal D – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the specialty programming undertaking known as Canal D, from 1 September 2005 to 31 August 2012. 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 Astral Broadcasting Group Inc. (Astral) to renew the broadcasting licence for the French-language specialty programming undertaking known as Canal D, which expires 31 August 2005.
2. In its licence renewal application, the licensee proposed to operate this undertaking under the same terms, conditions and definitions as those in effect under the current licence.
3. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence for Canal D, from 1 September 2005 to 31 August 2012. The licence will be subject to the **conditions** specified therein and to the **conditions** set out in the appendix to this decision.

### **Interventions**

4. The Commission received interventions in support of Canal D's licence renewal and comments from the Association des producteurs de films et de télévision du Québec (APFTQ), the Société des auteurs de radio, télévision et cinéma (SARTEC) and the Canadian Association of Broadcasters (CAB). In addition, Mr. Éric Giguère filed an intervention opposing the broadcast of advertising material by Canal D.

5. APFTQ submitted that, in making its decision on whether to increase Canal D's requirements with respect to Canadian programming expenditures, the Commission should use the method implemented 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). In APFTQ's view, however, the Commission should apply that method to the consolidated profits before interest and tax (PBIT) of all the specialty services owned by Astral.
6. According to SARTEC, given Canal D's financial success, it should be encouraged, by means of a condition of licence, to increase its Canadian content to a minimum of 60% over the broadcast day and 50% over the evening broadcast period, the levels that are a regulatory requirement for all conventional television broadcasters.
7. SARTEC contended that Canal D should also be required to increase its expenditures devoted to acquiring or investing in Canadian programming by seven percentage points to at least 47% of its gross revenues.
8. SARTEC also submitted that all of Canal D's commitments with respect to "original" programming should be reformulated to specify [TRANSLATION] "original programming filmed in French", and be imposed by condition of licence.
9. Furthermore, SARTEC indicated that the volume and production values of Canal D's documentaries should be increased by means of higher programming budgets and specifications, and recommended that the licensee's commitments pertaining to the exhibition of, and expenditures on, Canadian programming be reformulated in order to meet those objectives.
10. The CAB commented on the Commission's intention to extend the profitability review introduced in Public Notice 2004-2 to other specialty services up for renewal. Specifically, the CAB maintained that such a review is not fair or balanced because it does not take into account the circumstances specific to each service and other important concerns.
11. Mr. Éric Giguère opposed the authorization granted to Canal D in its 1998 licence renewal to broadcast advertising material. The intervener did not oppose Canal D continuing to broadcast advertising material contingent upon such material being broadcast between programs so as not to interrupt the programs.

#### **Licensee's reply**

12. In response to interventions by APFTQ and SARTEC, Astral maintained that the method set out in Public Notice 2004-2 is not an appropriate and effective means of ensuring that original Canadian programming benefits from the commercial success of broadcasting undertakings. In the licensee's view, Canadian programming expenditures should increase proportionately as licensees' revenues grow. The licensee added that the success of the most

well-established services enable the licensees of multiple services to maintain a high level of Canadian programming expenditures for the less well-established services. Astral submitted that, if it were allowed to maintain its current condition of licence with respect to expenditures on Canadian programming, it would be able to maintain the high quality of original Canadian programming broadcast on all its services.

13. Astral also stated that it does not understand the logic of SARTEC's recommendation that the Canadian content levels broadcast by specialty services should be harmonized with those of general interest television broadcasters. Astral maintained that conventional television undertakings have identical regulatory obligations precisely because they all have a mandate to provide a general interest service, are available over-the-air, and have priority status on terrestrial distribution undertakings.
14. Astral added that, on the other hand, it is the diversity of specialty services that makes them so attractive. Further, these specialty services are subject to variable rates and terms. According to Astral, the concept that defines the nature of a specific specialty service and the conditions imposed on it delineating its nature of service affect its obligations with respect to Canadian content and expenditures on Canadian programming.
15. Astral submitted that the Canadian content requirement, which was set for Canal D at 45%, is relevant and appropriate for a service such as Canal D that gives priority to documentaries in all genres and formats.
16. Astral stipulated that the stabilization of its Canadian content level, after years of constant increases, would enable it to use its annual revenue growth to increase the number of original Canadian productions or the value of the hourly licence fees it can assign to them.
17. Astral disagreed with SARTEC's suggestion that Canal D reformulate its commitments with respect to original programming. In Astral's view, SARTEC's suggestion is aimed essentially at recognizing only original French-language Canadian programming as [TRANSLATION] "home-grown productions", and only members of SARTEC as [TRANSLATION] "home-grown authors." As a result, Astral submitted that SARTEC's proposal that Canal D, and eventually other French-language specialty services, be required to consider only original French-language programming as [TRANSLATION] "original Canadian programming" is inappropriate.
18. With respect to the intervention by Mr. Giguère, Astral noted that the intervener is opposed to a 1998 decision by the Commission and submitted that his intervention is not relevant to this licence renewal proceeding.

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

19. The Canadian programming requirements imposed on specialty services at the time of licensing or at licence renewal are determined by the Commission on a case-by-case basis. The Commission's requirements are based on such considerations as the genre of the service proposed by the applicant, the availability of Canadian programming falling within that genre, and the applicant's other plans and commitments. The Commission also takes into

account the applicant's proposed wholesale fee and the type of carriage on broadcasting distribution undertakings that the service would receive. The Commission questioned the licensee on the appropriateness of increasing its requirements with respect to expenditures on and/or exhibition of Canadian programming.

#### **Canadian content**

20. At its most recent licence renewal, the licensee had proposed to increase Canal D's Canadian content levels to 35% in the first year of the new licence term, to 40% in each of the second, third and fourth years, and to 45% at the start of the fifth year. The Commission acknowledges the licensee's efforts to increase the level of Canadian content during its current licence term. In the circumstances, the Commission finds that, rather than requiring the licensee to increase the total number of Canadian programs that Canal D must broadcast, it is more appropriate to require an increase in the expenditures on Canadian programming. Accordingly, the Commission requires the licensee to maintain the level of Canadian content at 45% over the broadcast day and the evening broadcast period. A **condition of licence** to this effect is set out in the appendix to this decision.
21. The Commission considers that, as proposed by the licensee, stabilizing Canadian content requirements should allow Canal D to use its annual revenue growth to increase the number of original Canadian productions or the value of the hourly licence fees that it can assign to them.

#### **Canadian programming expenditures**

22. In response to the Commission's questions, Astral submitted that it would not be appropriate to increase the percentage of gross revenues that Canal D must devote to expenditures on Canadian programming based entirely on its PBIT margin. The licensee contended that the percentage of revenues devoted to expenditures on Canadian programming is one of the many components of the concept and the business plan that the Commission accepted when it renewed Canal D's licence. According to Astral, increasing this percentage would fundamentally alter the service.
23. Traditionally, the Commission has considered it appropriate that a broadcaster's profitability be taken into account when assessing the contribution it should be called upon to make to the Canadian broadcasting system. At the same time, the Commission is of the view that it would be unfair and, over the long term, potentially counter-productive, for the Commission to increase the requirements imposed on profitable specialty licensees to a degree that would penalize their financial success and undercut their motivation to continue pursuing increased profit margins.
24. In Public Notice 2004-2, the Commission set out a graduated approach to Canadian programming expenditure requirements that the specialty services referred to therein would be required to meet during renewed licence terms. This approach was fully addressed by the applicant and interveners in this proceeding, and the Commission considers it appropriate to adopt it in this case. The Commission is satisfied that this approach is balanced and fair in that it takes into account a service's past financial performance and future projections, and

relates its Canadian programming expenditure requirements directly to its profitability. The Commission does not consider it appropriate to base it on consolidated profits as suggested by APFTQ but on a service by service basis. For a specialty service such as Canal D, which has been in operation for more than one licence term, the Commission considers it is appropriate to calculate the average PBIT margin for all the years that have elapsed under the current licence term.

25. The Commission notes that Canal D's average PBIT margin for the last licence term is between 30% and 34%, which is within the range for which the Commission, in the past, set an increase of five percentage points for Canadian programming expenditures. In Canal D's case, the Commission determines that a five percentage point increase from 40% to 45% is appropriate in the circumstances. The Commission notes that Canal D, whose Canadian programming expenditure requirements are increasing because of this approach, should realize reasonable profit margins over the next licence term.
26. Accordingly, the Commission requires that, beginning 1 September 2005, the licensee, in each year of the new licence term, expend on Canadian programming 45% of Canal D's previous year's gross revenues. A **condition of licence** to this effect is set out in the appendix to this decision.

#### **Dubbing**

27. The Commission notes that it received a comment by APFTQ regarding the dubbing of foreign programming and requesting that French dubbing of all foreign programming paid for directly by the licensee be done in Canada. Further to APFTQ's recommendation and, as proposed by the licensee, the Commission expects the licensee to ensure that the dubbing of all foreign programming paid for directly by the licensee is dubbed in French in Canada.

#### **Regional reflection and independent production**

28. Section 3(1)(i)(v) of the *Broadcasting Act* (the Act) states that the programming provided by the Canadian broadcasting system should "include a significant contribution from the Canadian independent production sector." The Commission's concern is to ensure that independent production companies unaffiliated with the licensee have reasonable access to the licensee's program schedule.
29. The Commission notes the numerous initiatives undertaken by Canal D aimed at reflecting the various regions of Quebec and Canada in its programming.
30. In accordance with its objective, the Commission expects the licensee to ensure that the programming aired by Canal D reflects all of Canada's regions. The Commission also expects the licensee to continue to provide opportunities for producers working outside the major production centres to supply programming for the service.

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

31. Pursuant to section 5(4) of the 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.
32. 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.
33. In this regard, the licensee stated that it does not have any on-air employees. However, the Commission expects Canal D to give high priority to representing members of the four designated groups in its original productions.

### **Cultural diversity**

34. All broadcasting licensees, including those that operate specialty services, have a responsibility to contribute to the reflection and portrayal of Canada's cultural diversity in furtherance of the policy objectives contained in section 3(1)(d) of the Act. Specifically, broadcasters share responsibility for assisting in the development of a broadcasting system that accurately reflects Canada's ethno-cultural minorities, Aboriginal peoples and persons with disabilities. Accordingly, broadcasters must ensure that the portrayal of such groups, through their presence and participation on-screen, is accurate, fair and non-stereotypical.
35. The Commission notes the initiatives that the licensee has undertaken 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.
36. 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. 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.

### **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.

38. In the context of its licence renewal application, the licensee stated that it was prepared to make a commitment, by condition of licence, to gradually increase the percentage of all its programming that will be closed captioned, starting at 55% in the first year and achieving 90% in the last year of its new licence term. The licensee added that it has also set itself the general objective of achieving a captioning level of 90% in the sixth year of its new licence term.
39. The Commission generally requires English-language services to close caption a minimum of 90% of all their programming. In the past, French-language services were required to caption a lower percentage of their programming, in recognition of the greater challenges involved in captioning French-language programming.
40. The Commission notes that the licensee has indicated that it was prepared to make a commitment to close caption 55% of all of its programming, starting in the first year of its new licence term and to gradually increase that percentage to 90% of all of its programming starting in the last year of its new licence term. Consistent with the Commission's general approach for French-language services, the Commission expects the licensee to respect its captioning commitments and is imposing a **condition of licence** requiring the licensee to close caption at least 90% of all programming aired during the broadcast day, beginning no later than 1 September 2010. The **condition of licence** is set out in the appendix to this decision.
41. The Commission further 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. Section 3(1)(p) of the Act states that, as part of the broadcasting policy for Canada, "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose." Accordingly, the Commission expects that all broadcasters work toward improving the accessibility of their programming for persons who are blind or whose vision is impaired.
43. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description and video description (also known as described video).
44. In recent decisions renewing the licences of specialty services, the Commission expected licensees to provide audio description wherever appropriate, to undertake upgrades to permit the delivery of described video on a secondary audio program (SAP) channel, and to acquire and broadcast described video programming wherever possible. Where appropriate, the Commission also encouraged specialty service licensees to provide at least one hour per week of described video programming, increasing by an additional hour per week in each successive year of the licence term.

45. Furthermore, as indicated in Public Notice 2004-2, the Commission has not imposed any specific requirements on services whose programming is music-based, or is oriented towards sports, or news and information. Instead, the Commission's focus has been on services featuring those types of programming, such as drama, documentary and children's programs, that best lend themselves to described video.
46. The Commission notes the steps the licensee has taken during the current licence term to provide improved access to viewers who have visual impairments. The licensee intends to make the independent producers that provide programs for Canal D more aware of the benefits for people who are visually impaired of having the program host provide, wherever possible and appropriate, audio description of certain information elements that appear on screen in textual or graphic form. The licensee also indicated that it is closely following technical developments that will improve access to Canadian programming services for people who have visual impairments, and that it intends to participate in the industry forums where these issues will be examined.
47. The Commission will continue to adopt a case-by-case approach, as stated in Public Notice 2004-2. The Commission has considered Canal D's arguments that significant technical upgrades would first be required to provide described video using a SAP channel. The Commission further notes that Canal D is making significant profits. Accordingly, the Commission determines that it is appropriate to allow the licensee two years to plan its activities.
48. Consistent 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 determines that it is appropriate to require the licensee to provide a minimum of two hours of described video programming each week, beginning no later than 1 September 2007, and to increase that amount to a minimum of three hours each week, beginning no later than 1 September 2010. A **condition of licence** to this effect is set out in the appendix to this decision. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service.

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

49. In *Policy on violence in television programming*, Public Notice CRTC 1996-36, 14 March 1996, the Commission noted concerns expressed by parties that programs originating in certain time zones were being delivered by satellite to viewers in other time zones at hours that would be considered as inappropriate for their broadcast, based on the programs' content. The Commission encourages licensees whose services are distributed over various time zones to consider viewers in all the time zones served and offer the requisite protection when certain programs are scheduled.

50. The Commission wishes to underscore the importance it places on each broadcaster according proper sensitivity to the concerns of its viewers with respect to the scheduling of programming intended for adult audiences, taking into account the time zone differences between where a program originates and where it is received. The Commission expects licensees to demonstrate responsibility, particularly in responding to any complaint.

**Compliance with industry codes**

51. 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 in PDF format or in HTML at the following Internet site:*  
<http://www.crtc.gc.ca>

## Appendix to Broadcasting Decision CRTC 2005-441

### Conditions of licence

1. The licensee shall provide a national specialty service in the French language with at least 90% of its programming dedicated exclusively to programs drawn from the following categories as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
  - 2 (a) Analysis and interpretation
  - (b) Long-form documentary
  - 7 (a) Ongoing drama 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, improvisations, unscripted works, stand-up comedy
  - (g) Other drama
  - 8 (a) Music and dance other than music video programs or clips
  - 9 Variety
  - 11 General entertainment and human interest
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
2. At least 50% of the broadcast day shall be devoted to documentaries.
3. All feature films other than documentaries distributed by the licensee must have been copyrighted for at least seven (7) years prior to the broadcast date.
4. No feature films, other than documentaries, shall be distributed in prime time (6:00 p.m. to 11:00 p.m.).
5. With the exception of category 7(d) programming, dramatic programming produced in North America and distributed by the service shall not be recent works, that is, they must have been copyrighted for at least five (5) years as of their date of broadcast (program logs must make it possible to identify the dates).
6. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 45% of the broadcast day and of the evening broadcast period.

7. 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 each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 45% of the gross revenues derived from the operation of this service during the previous broadcast year;
  - (b) 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;
  - (c) 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.
  - (d) Notwithstanding paragraphs (b) and (c) 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.
8. The licensee shall charge each exhibitor of this service a maximum wholesale rate of \$0.65 per subscriber per month, where the service is distributed as part of the basic service.
9. (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, the licensee may broadcast partisan political advertising during an election period.
10. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast day, beginning no later than 1 September 2010.
11. 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 no later than 1 September 2007, increasing to a minimum of three hours during each broadcast week, beginning no later than 1 September 2010. In fulfilling this condition, a minimum of 50% of the required hours must be original to the service.
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 purposes of these conditions of licence, all time periods shall be calculated according to Eastern standard time; the term “broadcast day” shall mean a 24-hour day commencing at 4 a.m. each day, or any other period approved by the Commission; the terms “broadcast year”, “evening broadcast period” and “clock hour” shall have the same meaning 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*; and 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.