



## Broadcasting Decision CRTC 2007-136

Ottawa, 15 May 2007

**Fifth Dimension Properties Inc.**  
Across Canada

*Application 2006-1233-4, received 2 October 2006*  
*Public Hearing in the National Capital Region*  
*27 March 2007*

### **PENTHOUSE TV – Category 2 specialty service**

*In this decision, the Commission **approves** an application for a broadcasting licence to operate a new Category 2 specialty programming undertaking.*

#### **Introduction**

1. Fifth Dimension Properties Inc. filed an application for a broadcasting licence to operate PENTHOUSE TV, a national, English-language Category 2 specialty programming service devoted exclusively to feature driven couples-oriented adult entertainment, including both amateur and professional actors simulating amateur performances.
2. The Commission has implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing Category 1 or analog pay or specialty television service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question. Where appropriate, in setting conditions of licence, the Commission prevents or limits the broadcast of specific types of programming to ensure that the service is not nor will become directly competitive with any existing Category 1 or analog pay or specialty television service.
3. In the present case, the Commission received one intervention in connection with the application from Astral Television Networks (Astral), a division of Astral Broadcasting Group Inc. Astral operates The Movie Network and MPix, two English-language analog pay television programming undertakings that provide general interest theatrical movie-based services in eastern Canada. The intervener noted that the applicant had proposed no restrictions on its selections from the programming categories set out in the *Specialty Services Regulations, 1990*. Astral requested that the service be subject, by condition of licence, to a 15% limitation on programs from category 7(d) (Theatrical feature films aired on TV).

4. The applicant did not reply to the intervention.

### **Commission's analysis and determinations**

5. With respect to the intervener's comment, the Commission notes that the applicant's nature of service is limited to the distribution of adult-type entertainment and films. Consequently, the Commission considers that imposing a 15% limitation on programs from category 7(d) is unwarranted.
6. The Commission is further satisfied that the application is in conformity with all applicable terms and conditions announced in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001. Accordingly, the Commission **approves** the application by Fifth Dimension Properties Inc. for a broadcasting licence to operate a national, English-language Category 2 specialty programming undertaking to be known as PENTHOUSE TV. The terms and **conditions of licence** of the new undertaking are set out in the appendix to this decision.

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 2007-136

### Terms and conditions of licence for the Category 2 specialty programming undertaking PENTHOUSE TV

#### Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- the applicant has entered into a distribution agreement with at least one licensed distributor; and
- the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 15 May 2010. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

The licence will expire 31 August 2013 and will be subject to the **conditions** set out below.

The Commission expects the licensee to adhere to its internal policy on adult programming in addition to complying with the **conditions of licence** set out below.

#### Conditions of licence

1. The licence will be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001.
2. The licensee shall provide a national, English-language Category 2 specialty programming service devoted exclusively to feature driven couples-oriented adult entertainment, including both amateur and professional actors simulating amateur performances.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:

- 7 (c) Specials, mini-series or made-for-TV feature films
- (d) Theatrical feature films aired on TV
- (e) Animated television programs and films
- (g) Other drama

12 Interstitials

14 Infomercials, promotional and corporate videos

4. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, the licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.
5. The service shall only be distributed at the specific request of the subscriber. Distributors are not permitted to package the service in such a way that subscribers are obligated to purchase it in order to purchase any other programming service, other than an adult programming service. Distributors are required to take measures to fully block the reception of both the audio and video portions of the service to subscribers who request that it not be receivable in their home, in either unscrambled or scrambled form.
6. The licensee shall adhere to section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003.

For the purposes of the conditions of this licence, including condition of licence no. 1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m. or any other period approved by the Commission.