



## Broadcasting Decision CRTC 2007-31

Ottawa, 25 January 2007

**Black Walk Corporation**  
Across Canada

*Application 2006-0794-7*  
*Public Hearing in the National Capital Region*  
*14 November 2006*

### **Trailers – 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.*

### **The application**

1. The Commission received an application by Black Walk Corporation (Black Walk), for a broadcasting licence to operate a national, English-language Category 2<sup>1</sup> specialty programming undertaking to be known as Trailers.
2. The applicant proposed to offer a service that would consist of movie trailers for films in theatrical or DVD release in Canada, promotional programming about specific feature films, gossip, reportage from film festivals, and film industry analysis and interpretation. The service would also broadcast long-form documentaries and theatrical films with stories specifically based on the film and TV industry.
3. All of the programming would be drawn from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990* (the Regulations): 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 5(b) Informal education/Recreation and leisure; 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 8(b) Music video clips; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.

---

<sup>1</sup> The Category 2 services are defined in *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.

## Interventions

4. The Commission received a number of interventions in support of this application, and three in opposition, submitted by the following licensees of movie-based pay and specialty services: Astral Television Networks, a division of Astral Broadcasting Group Inc. (Astral), licensee of The Movie Network and MoviePix; Alliance Atlantis Communications Inc. (Alliance Atlantis), licensee of the Independent Film Channel (IFC); and Corus Premium Television Ltd. (Corus), the parent corporation of the licensees of Movie Central and Encore Avenue. All three interveners recommended that the Commission deny this application, arguing that it would be competitive with their respective services.
5. Astral submitted that, because the applicant proposed to broadcast movie trailers and promotional material related to feature films, such programming would more properly be classified as commercial messages, as defined in the Regulations. Astral further stated that the majority of the programming proposed for the service appeared to be trailers for foreign movies, which are considered promotional material, thus rendering the service not licensable as a programming undertaking. Corus similarly questioned whether the service would in fact be a programming service, given that most of the programming would consist of commercial messages.
6. Astral also noted that the service was proposing to broadcast an unlimited number of films from categories 7(c) and 7(d), and argued that with such flexibility, the service would be directly competitive with The Movie Network and MoviePix. Alliance Atlantis similarly argued that the authority to broadcast unlimited feature films would permit Trailers to be substantially similar to IFC. Corus also noted that with program categories 2(b), 7(c) and 7(d), the service would have considerable latitude in the programming that could be offered and could become directly competitive with existing specialty and Category 1 services.
7. Astral and Alliance Atlantis recommended that, if the Commission were to approve the proposed service, it should be subject to a 15% limitation on programs from category 7, as the Commission has imposed on other Category 2 services, including a similar service owned by Black Walk known as Movie News Network. Astral also recommended that the Commission ensure that any broadcast of trailers for foreign films falls within the twelve minutes of advertising material allowed during each clock hour.
8. Alliance Atlantis recommended that, if the Commission were to approve this application, Trailers should be subject to the following conditions of licence, which would address the directly competitive nature of the proposed service:
  - All programming from categories 7(c) and 7(d) be limited to 15% of the broadcast week and be limited to Canadian drama.
  - A minimum of 75% of all programming shown on Trailers during the day and evening period be limited to movie trailers.

- All long-form documentaries and theatrical feature films be required to have the film and TV industry as the central theme.
9. Corus expressed concern that the service would necessarily progress to exhibiting only films, in light of the very limited availability of the proposed core material. Corus noted that trailers such as bonus material and extra footage on DVD are often not cleared for broadcast and are reserved for added value to drive DVD sales.
  10. Corus also noted that the proposed service could have an impact on advertising revenues for existing specialty services as many such services currently benefit from theatrical and DVD release advertising.
  11. Corus recommended that, if the Commission approved the service, it apply the following conditions of licence to ensure that the proposed service would not become directly competitive with existing pay and specialty and Category 1 programming services:
    - Not less than 70% of the programming should consist of trailers or movie promotional material; and
    - Long-form documentaries (Category 2b) and theatrical films (Category 7d) cannot exceed 15% of programming made available on Trailers service and must have the film and TV industry as the central theme.

#### **Applicant's response**

12. In response to the interventions, Black Walk argued that its service would be complementary to the interveners' services, because Trailers would enhance the value of the content they broadcast. Black Walk stated that Trailers would provide an opportunity for Canadians who are in large part unaware and uninformed of Canadian films available on DVD or in the theatre, to view trailers for Canadian films alongside U.S. films. It further stated that no other current specialty service offers this kind of showcase for Canadian films.
13. With respect to the concern that its content would be promotional, and thus advertising, the applicant stated that it did not agree that the entertainment, cultural, and intellectual property of Canadian and international filmmakers is akin to such products like "Spray on Hair", "Weed Wackers", or "The Clapper". It stated that any promotional content within a program featuring movie trailers would increase awareness of the film, regardless of who owns the licence to broadcast it, benefiting the Canadian broadcasting system.
14. In response to Alliance Atlantis' concern about the potential overlap of content on IFC and Trailers, Black Walk argued that there should be no restriction on the content that it would broadcast and that competition for the acquisition of film content will be more than welcome from Canadian producers.

15. In response to the concern expressed by Corus regarding its core programming, Black Walk stated that it plans to devote a substantial amount of its production resources to create appropriate content with production crews on set, post production facilities, and strategic partnerships, so as to ensure that Canadian productions have high-quality trailers and content for broadcast on the channel.

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

16. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission 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 pay or specialty television service, including any Category 1 service.
17. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000 and Public Notice CRTC 2000-171-1, 6 March 2001 – Corrected Appendix 2 (Public Notices 2000-171 and 2000-171-1), the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an existing analog pay or specialty service or an existing Category 1 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.
18. In the present case, the Commission considers that the interveners have made a strong case that the proposed service could become directly competitive with their services. The Commission acknowledges that the applicant confirmed that all long-form documentaries and films would be specifically based on the film and television industry. Nevertheless, the Commission is of the view that it would be appropriate to limit the broadcast of category 7 programming to 15% of the broadcast week, to ensure that the service would be complementary to, rather than directly competitive with, the services of the interveners.
19. With respect to the concern raised by Astral and Corus that the programming proposed by the applicant would appear to be more appropriately defined as commercial messages, the Commission reminds the applicant that it is limited, by **condition of licence**, to 12 minutes per hour of advertising material, and that advertising material is defined in the Regulations as follows:

“advertising material” means any commercial message and programming that promotes a station, network or program, but does not include:

- (a) a station or network identification,

(b) the announcement of an upcoming program that is voiced over credits, or

(c) a promotion for a Canadian program or a Canadian feature film, notwithstanding that a sponsor is identified in the title of the program or the film or is identified as a sponsor of that program or that film, where the identification is limited to the name of the sponsor only and does not include a description, representation or any attribute of the sponsor's products or services.

20. In light of the above, the Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Black Walk Corporation, for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking, Trailers.
21. The Commission reminds the applicant that if it wishes to enter at any given time into programming supply agreements and licence trademark agreements with non-Canadian independent producers, it must comply 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 Direction). Accordingly, the Commission requests that the applicant 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, in order to ensure that the applicant complies at all times with the Direction.
22. The licence will expire 31 August 2013, and will be subject to the **conditions** set out in Public Notice 2000-171-1, as well as to the **conditions** set out in the appendix to this decision.

### **Issuance of the licence**

23. A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:
  - an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
  - 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 25 January 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.

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 2007-31

### 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 consisting of movie trailers for films in theatrical or DVD release in Canada, promotional programming about specific feature films, gossip, reportage from film festivals, and film industry analysis and interpretation. The service would also broadcast long-form documentaries and theatrical films with stories specifically based on the film and TV industry.
3. The programming shall be drawn exclusively from the following categories, as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
  - 2 (a) Analysis and interpretation
  - (b) Long-form documentary
  - 3 Reporting and actualities
  - 5 (b) Informal education/Recreation and leisure
  - 7 (c) Specials, mini-series or made-for-TV feature films
  - (d) Theatrical feature films aired on TV
  - 8 (b) Music video clips
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
4. Not more than 15% of all programs broadcast during the broadcast week shall be drawn from program categories 7(c) and 7(d).

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.