



Broadcasting Decision CRTC 2009-221

Route reference: 2009-36

Ottawa, 24 April 2009

Mornington Communications Co-operative Limited
Milverton, Ontario

Application 2008-1262-9, received 18 September 2008

Public Hearing in Orillia, Ontario

26 January 2009

Video-on-demand service

*The Commission **approves** an application by Mornington Communications Co-operative Limited for a broadcasting licence to operate a regional video-on-demand service largely composed of feature films but that may also include other types of programming such as children's videos, short films and television shows.*

Introduction

1. The Commission received an application by Mornington Communications Co-operative Limited (Mornington Communications) for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve the villages and surrounding rural areas of Milverton, Gadshill, Newton, Millbank, Hesson and portions of Listowel, Ontario. The Commission did not receive any interventions in connection with this application.
2. Mornington Communications is a co-operative with share capital controlled by its board of directors.

Proposed service

3. Mornington Communications indicated that the new VOD service would consist primarily of feature films but may also include other types of programming such as children's videos, short films and television shows. Its program offering would be available to customers predominantly in the English language. However, the applicant stated that it would seek out and offer second- or third-language programs in accordance with demand.
4. Mornington Communications stated that it would provide closed captioning of its VOD programming to serve the needs of viewers who are deaf or hard of hearing. The applicant committed to caption, by the beginning of the sixth year of its licence term, 100% of all English- and French-language programs, and 90% of all third-language programs in its inventory.

5. Regarding accessibility of its VOD programming through video description (also known as described video) for persons with visual impairments, Mornington Communications stated in its application that it is a very small operator and therefore does not have the resources to independently add described video into its programming. However, Mornington Communications stated that it would ensure that all of the programming that includes video description be made available to interested subscribers.
6. The applicant requested authorization, as an exception to section 3(2)(d) of the *Pay Television Regulations, 1990* (the Regulations), which prohibits the distribution of programming containing commercial messages, to offer on an on-demand basis programming that contains commercial messages where:
 - the messages are already included in a program previously broadcast by a Canadian programming service;
 - the inclusion of these messages as part of the VOD offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program; and
 - the program is offered to subscribers on an on-demand basis at no charge.

Commission's analysis and determinations

Closed captioning and described video

7. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English- and French-language broadcasters to caption 100% of their programs, with the exception of advertising and promos, beginning in the first year of the licence term. The Commission also indicated that it is prepared to consider requests to tailor this requirement (e.g., to permit services to ramp up to the 100% requirement over time), only if such a request is supported with specific and detailed evidence, including financial information, that demonstrates that it is impossible for the applicant to meet the 100% captioning requirement.
8. The Commission notes that while Mornington Communications argued that it had limited resources, it did not tender any specific evidence that would allow the Commission to determine the costs that the applicant would have to incur in order to provide closed captioning in conformity with the approach set out in Broadcasting Public Notice 2007-54. As such, the applicant provided no conclusive evidence to the effect that the hardship it would face in conforming to the above-mentioned approach outweighed the strong public interest in ensuring that licensees caption 100% of English- and French-language programs broadcast over the broadcast day.
9. Therefore, the Commission is imposing a condition of licence requiring Mornington Communications to caption 100% of its English- and French-language programs, beginning in the first year of the licence term. A **condition of licence** to that effect is set out in the appendix to this decision.

10. The Commission encourages broadcasters to work on solutions for making third-language programming more accessible, and to caption third-language programming whenever possible. The licensee will be asked to report on its progress in providing third-language closed captioning at the time of licence renewal.
11. Currently, the Commission expects VOD licensees to provide audio description and video description of programming as well as customer service to respond to the needs of visually-impaired customers. In Broadcasting Notice of Public Hearing 2008-8 and Telecom Public Notice 2008-8, the Commission initiated a review of issues relating to the accessibility of broadcasting and telecommunications services to persons with disabilities. Following this review, the Commission may impose additional requirements on some or all licensees.

Commercial messages

12. The Commission notes that it has approved a number of applications for amendments to the broadcasting licences of VOD services to permit them to offer programming that includes commercial messages subject to the same criteria as those proposed by Mornington Communications. In these decisions, the Commission indicated that approval of the applications “would not represent a significant departure from the Commission’s framework for the licensing of VOD undertakings.”
13. In light of the above, the Commission considers that it is appropriate to authorize Mornington Communications to distribute programming that contains commercial messages where those messages are already included in a program previously aired by a Canadian programming undertaking, the program’s inclusion as part of the VOD offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program, and that the program is subsequently offered on an on-demand basis at no charge to the subscriber. A **condition of licence** to that effect is set out in the appendix to this decision.
14. In Broadcasting Public Notice 2008-101, the Commission called for comments on its preliminary determinations regarding a proposed regulatory framework for VOD services arising from its review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services (Broadcasting Public Notice 2008-100). The Commission notes that upon completion of the above proceeding, it may impose additional requirements on some or all licensees.

Conclusion

15. In light of all of the above, the Commission is satisfied that the application is in conformity with the licensing framework for VOD services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by Mornington Communications Co-operative Limited for a broadcasting licence to operate a regional video-on-demand programming undertaking to serve the villages and surrounding rural areas of Milverton, Gadshill, Newton, Millbank, Hesson and portions of Listowel, Ontario. The terms and **conditions of licence** are set out in the appendix to this decision.

16. To ensure that it will be in compliance 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, at all times, Mornington Communications proposed to make certain amendments to its by-laws and to its articles of incorporation. Consequently, the Commission requires the applicant to file, within 12 months of the date of this decision, a copy of its amended and executed by-laws and an executed copy of the amended articles of incorporation.

Secretary General

Related documents

- *Call for comments on a proposed regulatory framework for video-on-demand undertakings* – Notice of consultation, Broadcasting Public Notice CRTC 2008-101, 30 October 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities* – Notice of consultation, Broadcasting Public Notice CRTC 2008-8 and Telecom Public Notice CRTC 2008-8, 10 June 2008
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Introductory statement to Decisions CRTC 2000-733 to 2000-738: Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000

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 2009-221

Terms, conditions of licence, expectations and encouragement

Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve the villages and surrounding rural areas of Milverton, Gadshill, Newton, Millbank, Hesson and portions of Listowel, Ontario

Terms

The licence will expire 31 August 2015.

A licence for this undertaking will be issued once 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 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 24 April 2011. 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.

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of paragraph 3(2)(d) pertaining to commercial messages.
2. The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except where:
 - (a) the message was already included in a program previously broadcast by a Canadian programming service;
 - (b) the program's inclusion as part of the video-on-demand offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcast the program; and
 - (c) the program is offered to subscribers on an on-demand basis at no charge.
3. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the inventory available on each file server. The list must identify each program by programming category and by country of origin and indicate the period of time that each program was on the server and available to subscribers.
4. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.

5. The licensee shall ensure that, at all times:
 - (a) not less than 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory are Canadian;
 - (b) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and meet the approved *Industry Code of Programming Standards and Practices Governing Pay, Pay-Per-View and Video-On-Demand Services*; and
 - (c) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
6. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purposes of this condition:

- (a) “gross annual revenues” shall be 50% of the total revenues received from customers of the broadcasting distribution undertaking distributing the video-on-demand service, when the video-on-demand service is a “related service”;
 - (b) a “related service” is one in which the broadcasting distribution undertaking distributing the video-on-demand service or any of its shareholders owns, directly or indirectly, 30% or more of the equity of the video-on-demand service;
 - (c) “gross annual revenues” shall be the total amount received from the broadcasting distribution undertakings distributing the video-on-demand service, when the video-on-demand service is not a “related service”.
7. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
8. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
9. The licensee shall not enter into an affiliation agreement with the licensee of a broadcasting distribution undertaking unless the agreement incorporates a prohibition against linkage of its service with any non-Canadian discretionary service.
10. The licensee shall caption 100% of the English- and French-language programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC [2007-54](#), 17 May 2007.

11. The licensee shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
12. The licensee shall adhere to the *Pay Television and Pay-Per-View Programming Code Regarding Violence*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
13. The licensee shall adhere to the *Industry Code of Programming Standards and Practices Governing Pay, Pay-Per-View and Video-On-Demand Services*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

Expectations and encouragement

Program offering in both official languages

The Commission notes that the licensee did not commit to offer any programming in the French language. Nevertheless, the Commission expects the licensee to make its program offering available, to the maximum extent possible, to customers in both official languages.

Programming packages

The Commission expects the licensee to limit to one week the total period during which the programming in programming packages may be viewed.

Adult programming

The Commission expects the licensee to adhere to its internal policy on adult programming approved by the Commission. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

Cultural diversity

The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

Service to persons who are blind or whose vision is impaired

The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel. The Commission also expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of visually impaired customers.

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.