



Broadcasting Decision CRTC 2005-86

Ottawa, 1 March 2005

Mountain Cablevision Limited

Byng, Caledonia, Cayuga, Dunnville, Hagersville, Jarvis, Mount Hope,
Townsend and parts of Hamilton, Ontario

Application 2004-0246-2

Public Hearing in the National Capital Region

1 December 2004

Regional video-on-demand service

*The Commission **approves** the application by Mountain Cablevision Limited for a broadcasting licence to operate a regional English-language video-on-demand service largely composed of feature films.*

The application

1. The Commission received an application by Mountain Cablevision Limited (Mountain) for a broadcasting licence to operate a regional English-language video-on-demand (VOD) programming undertaking to serve Byng, Caledonia, Cayuga, Dunnville, Hagersville, Jarvis, Mount Hope, Townsend and parts of Hamilton, Ontario.
2. The proposed VOD service would consist primarily of feature films, although Mountain indicated that other types of programming would also be made available. Additional programming would include, but would not be limited to, action, drama, sports, animation, comedy and adult programming. While programming would be predominantly in the English language, the applicant indicated that approximately 5% of all programming offered would be French-language programming.
3. The Commission did not receive any interventions in connection with this application.

The Commission's analysis and determination

Closed captioning

4. 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 that they provide. It is the Commission's current practice to require licensees of VOD services to provide closed captioning for a minimum of 90% of all titles offered, by no later than the beginning of the sixth year of the licence term.

5. In its application, Mountain stated that it would ensure that 50% of all English- and French-language titles in its inventory are closed captioned, beginning in the first year of operation. That amount would increase by 10 percentage points annually in the second, third and fourth years of operation. In the fifth, sixth and seventh years of operation, the levels of closed captioned programming would be 80%, 90% and 90%, respectively. The applicant therefore stated that it would be willing to close caption 90% of all programming during the broadcast day by the beginning of the sixth year of operation. A **condition of licence** to this effect is set out in the appendix to this decision.
6. With respect to ethnic programming, the applicant indicated that it would ensure that 40% of all titles in its inventory are closed captioned, beginning in the first year of operation. That amount would increase by 10 percentage points annually in the second to the sixth year of operation. In the seventh year of operation, the level of closed captioned programming would be 90%.

French-language programming

7. As noted above, Mountain indicated that it would provide 5% French-language programming. In *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 (Public Notice 2000-172), the Commission underscored the importance it places on subscribers being able to select programming in the official language of their choice. Accordingly, as part of its licensing framework for VOD services, the Commission stated that it would expect, to the maximum extent possible, that each VOD service would make its program offering available to customers in both official languages, and expected that licensees would adhere to their commitments with respect to French-language programming. The Commission reiterates these expectations and confirms their applicability to Mountain's proposed VOD service.

Programming packages

8. In accordance with its policy set out in Public Notice 2000-172, the Commission expects the applicant to limit the total period during which the programming in programming packages may be viewed to one week.

Adult programming

9. In addition to the conditions of licence set out in the appendix to this decision requiring that the licensee adhere to the *Pay television and pay-per-view programming code regarding violence* and to the *Industry code on programming standards and practices governing pay, pay-per-view and video-on-demand services*, the Commission expects the applicant to adhere to the Commission's adult programming policy.

Cultural diversity

10. Section 3(1)(d)(iii) of the *Broadcasting Act* stipulates that the Canadian broadcasting system should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within that society.
11. The Commission expects the applicant to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of cultural and racial minorities and Aboriginal peoples. The Commission further expects the applicant 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

12. 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). Accordingly, the Commission expects Mountain 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 Mountain 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. Mountain indicated that it would work with distributors to determine whether existing automated services can be adapted for VOD.

The Commission's conclusion

13. Based on its examination of this application, and taking into account the Commission's determination set out above with respect to closed captioning, the Commission is satisfied that this application is in conformity with the licensing framework for VOD services as set out in *Licensing of New Video-on-demand Programming Undertakings – Introduction to Decisions CRTC 97-283 to 97-287*, Public Notice CRTC 1997-83, 2 July 1997 and Public Notice 2000-172.
14. Accordingly, the Commission **approves** the application by Mountain Cablevision Limited for a broadcasting licence to operate a regional English-language VOD programming undertaking to serve Byng, Caledonia, Cayuga, Dunnville, Hagersville, Jarvis, Mount Hope, Townsend and parts of Hamilton, Ontario.
15. The undertaking will be subject to the **conditions of licence** that are generally applicable to all VOD undertakings, including those relating to Canadian content and expenditures on Canadian programming.
16. The licence will expire 31 August 2011, and will be subject to the conditions specified therein and to the **conditions of licence** set out in the appendix to this decision.

Issuance of the licence

17. 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 1 March 2007. 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.

Employment equity

18. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

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 2005-86

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, with the exception of section 4 (logs and records).
2. 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, identifying each program by programming category and by country of origin, and indicating the period of time that each program was on the server and available to subscribers.
3. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
4. 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 available to subscribers are Canadian;
 - b) the feature film inventory includes all new Canadian feature films that are suitable for VOD 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.
5. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purpose 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 undertaking distributing the video-on-demand service, when the video-on-demand service is not a “related service”.
6. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
 7. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
 8. 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.
 9. The licensee shall caption at least 90% of the programming in its inventory, beginning no later than 1 September 2010.
 10. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters’ *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 is a member in good standing of the Canadian Broadcast Standards Council.
 11. 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.
 12. 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.