



Broadcasting Notice of Public Hearing CRTC 2005-6

Ottawa, 21 July 2005

The Commission will hold a public hearing commencing on 24 October 2005 at 9:30 a.m., at the Conference Centre, Portage IV, 140 Promenade du Portage, Gatineau, Quebec, to consider the following applications. The deadline for submission of interventions/comments is 8 September 2005.

- | Item | Applicant and Locality |
|-------------|---|
| 1. | Spotlight Television Limited Across Canada |
| 2. | Romen Podzyhun and C.J. (Cal) Millar, on behalf of a corporation to be incorporated Across Canada |
| 3. | Allarco Entertainment Inc. Across Canada |
| 4. | Archambault Group Inc. Across Canada |
| 5. | Canal Évasion inc. Across Canada |
| 6. | TVA Group Inc. Across Canada |
| 7. | Newcap Inc. Lac La Biche, Alberta |

PREAMBLE

1. In *Call for applications for a broadcasting licence to carry on a national general interest pay television undertaking*, Broadcasting Public Notice CRTC 2005-6, 14 January 2005 (Public Notice 2005-6) (Call for applications), the Commission announced that it had received an application for a broadcasting licence to carry on a national English-language general interest pay television undertaking requesting distribution on a digital basis, with entitlement to access under Section 18(5)(a)(ii) of the *Broadcasting Distribution Regulations*. The Commission called for applications from other parties wishing to obtain a broadcasting licence to provide a national general interest pay television undertaking.
2. Among the other items to be considered at the 24 October 2005 public hearing, the Commission will examine five applications for national pay television undertakings filed in response to the Call for applications: One application for a French-language service and four for English-language services. These applications are items 1 to 4 of this notice of public hearing.
3. As stated in Public Notice 2005-6, the Commission has not reached any conclusion with respect to the licensing or access privileges of any such proposed service at this time. As part of its examination of these applications, the Commission intends to consider the following issues, among others, at the hearing, and invites interested parties to comment.

Background

4. When it first licensed pay television services, the Commission favoured a market characterized by limited competition. The Commission was of the view that an element of competition would be more likely to enhance diversity and opportunities for consumer choice than a monopoly market structure. Under the licensing scenario set out in *Pay Television*, Decision CRTC 82-240, 18 March 1982 (Decision 82-240), the Commission approved one national English and French-language pay television service and three regional English-language general interest services and noted that there would be no more than two discretionary general interest services competing in any one area. The Commission stated that “the licensing of additional discretionary general interest services would jeopardize the ability of applicants licensed as a result of this decision to maximize opportunities for funding of Canadian programming.”
5. In Decision 82-240, the Commission also noted the absence of a regional French-language service and invited interested parties to submit applications for the provision of such service. A regional French-language pay television service was approved later that year.
6. In 1984, due to significant financial difficulties in the English-language pay television market, the Commission considered and approved a reorganization of the general interest services such that only two licensees would provide pay television services: one serving eastern Canada and the other western Canada. The Commission was of the view that,

given the unfavourable economic conditions at that time, such a reorganization was necessary for the survival of English-language pay television (*Reorganization of English-language general interest pay television networks*, Decision CRTC 84-654, 16 August 1984). That same year, and for similar reasons, the Commission also approved the consolidation of the national and regional French-language pay television services into a single national general interest pay service.

7. Since that time, the Commission's policies with respect to the licensing of new pay or specialty services have generally precluded the licensing of new services that would be directly competitive with existing pay or specialty services, in order to ensure that existing services can continue to meet their objectives under the *Broadcasting Act*.

Competitiveness / Impact on existing pay television services

8. The Commission invites interested parties to comment on whether exceptions to its existing digital licensing framework,¹ in particular its policies regarding the licensing of services which may be directly competitive with existing services, should be made or not. The Commission also invites comments on the capacity of the English and French-language pay television markets to absorb the entry of one or more additional general interest pay television services that may be directly competitive with existing services, including the impact on the program rights market. Parties may also wish to comment specifically on the impact of each of the five proposed services on existing services. Further, the Commission invites interested parties to comment generally about the extent to which benefits to the Canadian broadcasting system may accrue from licensing one or more additional general interest pay television services.

Access and capacity

9. Under section 18(5) of the *Broadcasting Distribution Regulations*, Class 1 broadcasting distribution undertakings (BDUs) are required to carry all pay television services operating in the official language of the majority of the population within their licensed area to the extent of available channels. Under section 38(2) direct-to-home satellite (DTH) BDUs are required to carry all pay television services to the extent of available channels. Further, under section 18(11.1) Class 1 and 2 BDUs that have a nominal capacity of at least 750 MHz and that make use of digital technology must distribute at least one pay television service in each official language.
10. The Commission seeks comments on the appropriateness of applying these rules for the distribution of any new pay services, on a digital basis, including comments on the capacity implications for BDUs. In this context, the Commission also seeks comments on whether the Commission should impose a minimum number of "multiplex channels" that must be carried, especially in light of the applicants' proposals to include high definition (HD) programming.

¹ *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000.

1. **Across Canada**
Application No. 2004-0991-3

Application by **Spotlight Television Limited** for a licence to operate a national English-language general interest pay television programming undertaking to be known as Spotlight. The applicant proposes that the service be distributed on a digital basis with entitlement to access under section 18(5) of the *Broadcasting Distribution Regulations*.

The applicant states that the programming will consist of limited series and long form drama, comedy series, feature films and long form documentaries, and occasional major international sporting events and concerts.

The applicant proposes to offer programming from the following categories: 2(a), 2(b), 3, 6(a), 6(b), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 8(a), 8(b), 8(c), 9, 10, 11, 12, 13 and 15 as set out in Schedule I of the *Pay Television Regulations, 1990*. The applicant also proposes that no more than 5% of its programming schedule during each six-month semester to programming from category 6 (sports), with a maximum of 20 hours in any week.

The applicant proposes to exhibit 30% Canadian content from 6:00 pm to 11:00 pm and 25% for the remainder of the day. The applicant also proposes to spend \$15 million on Canadian programming in the first full year of operation, \$20 million in the second year, and 32% of the previous year's gross revenues in each subsequent year. The applicant also proposes to spend \$1.5 million of program development in each year.

The applicant is seeking to be able to broadcast programming produced by the licensee or a related company. The applicant proposes that such programming be limited to 25% of its Canadian programming schedule and 25% of its annual expenditures on Canadian programming.

Applicant's address:

c/o McCarthy Tétrault LLP
 Suite 4700, Toronto Dominion Bank Tower
 Toronto, Ontario
 M5K 1E6
 Fax: (416) 868-0673

Examination of application:

At the applicant's address, and

McCarthy Tétrault LLP
 Le Windsor
 1170 Peel Street
 Montréal, Quebec

McCarthy Tétrault LLP
 Suite 3300, 421 7th Avenue South West

Calgary, Alberta

McCarthy Tétrault LLP
Suite 1300, Pacific Centre
777 Dunsmuir Street
Vancouver, British Columbia

[\[Broadcasting intervention/comments form\]](#)

2. **Across Canada**
Application No. 2005-0452-3

Application by **Romen Podzyhun and C.J. (Cal) Millar, on behalf of a corporation to be incorporated**, (The Canadian Film Channel inc.) for a licence to operate a national English-language general interest pay television programming undertaking to be known as The Canadian Film Channel.

The applicant states that the programming will be entirely dedicated to presenting Canadian programming. The service will offer feature films, short films, mini features, documentaries and animation, the majority of which will be English-language drama. The schedule will also include Canadian French-language drama with English sub-titles. The applicant proposes to offer programming from the following categories: 2(a), 2(b), 3, 7(a), 7(c), 7(d), 7(e), 7(g), 11, 12, and 13 as set out in Schedule I of the *Pay Television Regulations, 1990*.

The applicant proposes to exhibit 100% Canadian content. The applicant also proposes to spend approximately 50% of the gross revenue in each year on Canadian programming.

The applicant is seeking the distribution of its service, for no additional subscriber fee, to all of the subscribers of the current English-language pay services offered by the Class 1, 2, and 3 broadcasting distribution undertakings and both of the direct-to-home satellite distribution undertakings that are distributing the current pay services. The applicant is also seeking the inclusion of its service in a package with each of the current English-language pay services.

The applicant proposes to derive its revenue from the gross revenues of the current English-language pay television licensees, The Movie Network, MoviePix, Movie Central, and Encore Avenue. To achieve this, it proposes that a new condition of licence be imposed on the current English-language pay licensees at their next licence renewal that would require them to direct, each month, 12.9% of their gross revenue to the applicant.

Applicant's address:

488 Wellington Street West
Suite 100

Toronto, Ontario
 M5V 1E3
 Fax: (416) 492-9539
 E-Mail: info@thecanadianfilmchannel.com

Examination of application:

At the applicant's address

[\[Broadcasting intervention/comments form\]](#)

3. **Across Canada**
Application No. 2005-0454-9

Application by **Allarco Entertainment Inc.** for a licence to operate a national English-language general interest pay television programming undertaking to be known as Allarco Entertainment. The applicant proposes that the service be distributed on a digital basis with entitlement to access under Section 18(5) of the *Broadcasting Distribution Regulations*.

The applicant states that the majority of programming will consist of feature films, original series, specials and dramatic mini-series, in high definition format.

The applicant proposes to offer programming from the following categories: 2(a), 2(b), 3, 6(a), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 8(a), 8(b), 9, 10, 11, 12 and 13 as set out in Schedule I of the *Pay Television Regulations, 1990*. The applicant also proposes that no more than 5% of its programming schedule during each six-month semester be devoted to programming from category 6 (sports) with a maximum of 20 hours in any week.

The applicant proposes to exhibit 30% Canadian Content from 6:00 pm to 11:00 pm and 25% for the remainder of the day. The applicant also proposes to spend \$4 million on Canadian programming in the first year of operation and 32% of the previous year's gross revenues in each subsequent year.

In addition, the applicant proposes the following conditions of licence:

- a) In the broadcast year where it no longer has a cumulative deficit, expend on investment in Canadian programs by way of equity investment or bridge financing an amount equal to its operating profit after tax for that year less any amount used to reduce the deficit.
- b) In each subsequent broadcast year during the term of its licence, expend on investment in Canadian programs by way of equity investment or bridge financing an amount equal to its operating profit after tax for that year.
- c) Expend on script and concept development not less than \$2,000,000 in each broadcast year excluding overhead costs.

Applicant's address:

13723 Summit Point
 Edmonton, Alberta
 T5N 3S6
 Fax: (780) 434-3310
 E-Mail: wry@shaw.ca

Examination of application:

Offices of Borden Ladner Gervais LLP
 Suite 4400
 Scotia Plaza
 Toronto, Ontario

[\[Broadcasting intervention/comments form\]](#)

4. **Across Canada**
Application Nos. 2005-0451-5 (French-language service) and
2005-0755-1 (English-language service)

Applications by **Archambault Group Inc.** for two licences to operate national general interest pay television programming undertakings, one in English and one in French, both to be known as BOOMTV. The licensee is seeking to be distributed in the same manner as a Category 1 service, and proposes the mandatory distribution of the French-language service in francophone markets and the English-language service in anglophone markets.

Although the French-language service and the English-language service would not offer identical programs, each service would be subject to the same conditions.

The applicant proposes two “premium services” that will regularly favour first-run dramatic programs and series that will be broadcast at a later date on conventional television services.

The applicant proposes to divide its programming into four main areas: feature film (64%), sports (13%), television drama (12%) and events (11%).

The applicant proposes to offer programming from the following categories: 2b, 5b, 6a, 6b, 7a, 7b, 7c, 7d, 7e, 7f, 7g, 8a, 8b, 9, 11, 12 and 15 as set out in Schedule I of the *Pay Services Regulations, 1990*.

The applicant proposes to exhibit 30% Canadian content from 6:00pm to 11:00pm and 25% for the remainder of the day.

The applicant will invest 20% of its annual revenues in Canadian programming. It will also invest 1% in script development (contribution to Fonds Quebecor).

The applicant is seeking to be able to broadcast programming produced by the licensee or a related company. It proposes to limit such programming to 30% of its Canadian programming each year.

The applicant is of the view that the French-language service would not be viable if the English-language service were not also approved.

Applicant's address:

Archambault Group Inc.
6455, Jean-Talon Street East
Suite 500
St-Léonard, Quebec
H1S 3E8
Fax: 514-259-0300
E-Mail: regulatory@videotron.com

Examination of applications:

Le Super Club Vidéotron
6455, Jean-Talon Street East
Suite 500
St-Léonard, Quebec

Quebecor Média inc. (Head Office)
612, St-Jacques Street
Montréal, Quebec

Quebecor Média Inc.
300, Avenue Viger East
Montréal, Quebec

[\[Broadcasting intervention/comments form\]](#)

5. **Across Canada**
Application No. 2005-0047-2

Application by **Canal Évasion inc.** to renew the licence of the national French-language specialty programming undertaking known as Canal Évasion, expiring 28 February 2006.

The licensee proposes to operate this undertaking under the same terms, conditions and definitions in effect under the current licence with the exception of the following :

to amend the condition of licence relating to the percentage of Canadian

programming expenditures so as to progressively reduce its requirements from 46% to 42% for its next licence term;

to add program categories 6a (Professional sports) and 7f (Programs of comedy sketches, improvisations, unscripted works and stand-up comedy).

The Commission will examine the apparent non-compliance of the licensee with respect to its condition of licence concerning the broadcast of programs from category 6a (Professional sports), the yearly Canadian programming expenditures, as well as the amount of its annual budget for acquiring the rights to original Canadian programming that can be spent on programs produced by companies that are shareholders or affiliated companies.

Licensee's address:

992 Joliette Street
 Longueuil, Quebec
 J4K 4V9
 Fax: (450) 677-9964
 E-Mail: info@canalevasion.com

Examination of application:

At the licensee's address

[\[Broadcasting intervention/comments form\]](#)

**6. Across Canada
 Application No. 2005-0668-6**

Application by **TVA Group Inc.** (TVA) to effect a corporate reorganization that will result in the transfer of the assets of the national, digital, French-language Category 1 specialty programming undertakings called LCN Affaires and Canal Mystère.

The applicant is also requesting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences, upon surrender of the licences issued to LCN Argent inc. (LCN Argent) and 4246578 Canada Inc. (4246578).

As a result of the corporate reorganization LCN Argent and 4246578 will be wound up into their parent company TVA.

The Commission notes that the transaction does not alter the ultimate control of LCN Affaires and Canal Mystère, which will continue to be exercised by Les Placements

Péladeau inc.

Applicant's address:

TVA Group Inc.
1600 Maisonneuve Boulevard East
Finance, 7th Floor
Montréal, Quebec
H2L 4P2
Fax: (514) 380-4664
E-Mail: tabet.peggy@quebecor.com

Examination of application:

At the applicant's address, and

Quebecor Media Inc.
300 Viger Avenue East
Regulatory Affairs
6th Floor East
Montréal, Quebec

[\[Broadcasting intervention/comments form\]](#)

7. **Lac La Biche, Alberta**
Application No. 2005-0544-8

Application by **Newcap Inc.** for a licence to operate an English-language FM commercial radio programming undertaking in Lac La Biche.

The new station would operate on frequency 103.5 MHz (channel 278A) with an effective radiated power of 1,900 watts (non-directional antenna/antenna height of 71.4 metres).

The applicant proposes a Country music format.

The Commission will only proceed with this application at the public hearing if advised by the Department of Industry, at least twenty days prior to the hearing, that it is technically acceptable.

Applicant's address:

745 Windmill Road
Dartmouth, Nova Scotia.
B3B 1C2
Fax: (902) 468-5661

E-Mail: ncc@ncc.ca

Examination of application:

5414 – 44 Street
Cold Lake, Alberta

[\[Broadcasting intervention/comments form\]](#)

Public Participation

Deadline for Interventions/Comments

8 September 2005

The intervention must be received by the CRTC and by the applicant on or before the above-mentioned date. The Commission cannot be held responsible for postal delays.

Your intervention will be considered by the Commission, and will form part of the public record of the proceeding without further notification to you, provided the procedure set out below has been followed. You will be contacted only if your submission raises procedural questions.

Submit your written intervention to the Secretary General of the Commission in **only one** of the following formats:

by using the

Broadcasting Intervention/Comments Form

located below the description of each application within this public notice

or

by mail to

CRTC, Ottawa, Ontario K1A 0N2

or

by fax at

(819) 994-0218

A true copy must be sent to the applicant and proof that this has been done must accompany the intervention sent to the Commission.

The Commission advises those who file and serve by electronic mode to exercise caution when using e-mail for service of documents or notification, as it may be difficult to establish that service has occurred.

Before initiating service through electronic mode, please ensure that you will be able to satisfy the Commission, upon request, that service of the notification was completed.

Where the intervention is filed by electronic means, the line ***End of document*** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Each paragraph of the document should be numbered.

Your intervention should clearly identify the application and indicate whether you support or oppose the application, or if you propose changes to it, include the facts and grounds for your proposal.

Important

All information submitted, including your email address, name and any other personal information as provided, will become part of the public record and can be viewed on the Commission's Web site.

Documents sent in electronic format will be put on the Commission's Web site exactly as we received them, and in the official language and format in which they are sent. Documents not received electronically will be scanned and put on the Web site.

Examination of Documents

An electronic version of applications is available from the Commission's web site by selecting the application number within this notice.

A list of all interventions/comments will also be available on the Commission's Web site. An electronic version of all interventions/comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's Web site.

Documents are also available during normal office hours at the local address provided in this notice and at the Commission offices and documentation centres directly involved with these applications or, upon request, within 2 working days, at any other CRTC offices and documentation centres.

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Secretary General

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