



Broadcasting Decision CRTC 2007-252

Ottawa, 26 July 2007

High Fidelity HDTV Inc., on behalf of a corporation to be incorporated Across Canada

*Application 2007-0092-3, received 19 January 2007
Public Hearing in the National Capital Region
28 May 2007*

Horror HD – Category 2 specialty service

*The Commission **approves** an application for a broadcasting licence to operate a new
Category 2 specialty programming undertaking.*

Introduction

1. High Fidelity HDTV Inc., on behalf of a corporation to be incorporated, filed an application for a broadcasting licence to operate Horror HD, a national, English-language Category 2 specialty service devoted to horror and thriller movies and other programming, such as magazine style shows, dedicated to horror and thriller subject matters. The applicant indicated that no more than 25% of the programming would be from the thriller genre.
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. The Commission received an intervention by Astral Television Networks (Astral), a division of Astral Broadcasting Group Inc., commenting on this application. Astral owns and operates The Movie Network (TMN) and MPix, two English-language analog pay television programming undertakings that provide general interest theatrical movie-based services in eastern Canada.

4. After considering the positions of the applicant and the intervener, the Commission finds that the issue to be determined in its evaluation of this application is whether the proposed service would be directly competitive with TMN and MPix or with other existing Category 1 or analog pay or specialty services.

Would Horror HD be directly competitive with existing Category 1 or analog pay or specialty services?

5. Astral submitted that the proposed definition of Horror HD's nature of service was too broad and the lack of limitations on the program categories might allow Horror HD to become a movie-based service that would be directly competitive with TMN and MPix. For this reason, Astral requested that Horror HD be subject to a condition of licence similar to that imposed on the Category 2 service Scream TV, approved in Decision 2000-665, limiting the amount of programs drawn from category 7(d) Theatrical feature films aired on TV, to no more than 50% of the broadcast week.
6. In response, the applicant contended that Astral had not provided any relevant evidence to demonstrate that Horror HD would be directly competitive with TMN or MPix or with any other existing movie-based pay television service. According to the applicant, its proposed nature of service is similar to that of the Category 2 service Scream (formerly known as HorrorVision), which was approved in Decision 2000-527. The applicant pointed out that Scream is not subject to any limitations on programs drawn from category 7(d).
7. In response to another request by Astral that Horror HD be subject to a limitation on the amount of programming it may broadcast from the thriller genre, the applicant indicated its willingness to accept a condition of licence limiting the programming drawn from the thriller genre to no more than 25% of the broadcast week.
8. The Commission notes that the nature of service proposed by the applicant is limited to the horror and thriller genre and that no more than 25% of the programming would be from the thriller genre. The Commission considers that this is sufficient to distinguish the service from TMN and MPix without imposing a limitation on programs drawn from category 7(d).
9. Based on the foregoing, the Commission is satisfied that the proposed service would not be directly competitive with TM or MPix or with other existing Category 1 or analog pay or specialty services and that the application is consistent with Public Notice 2000-6. Furthermore, 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 High Fidelity HDTV Inc., on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking, Horror HD. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- *Scream TV*, Decision CRTC 2000-665, 14 December 2000
- *HorrorVision*, Decision CRTC 2000-527, 14 December 2000
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 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 2007-252

Terms and conditions of licence for the Category 2 specialty programming undertaking Horror HD

Terms

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 26 July 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.

Conditions of licence

1. The licence shall 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 to horror and thriller movies and other programming such as magazine style show, dedicated to horror and thriller subject matters.
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:

- 1 News
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 5 (b) Informal education/Recreation and leisure
 - 7 Drama and comedy
 - (a) Ongoing drama series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - (g) Other drama
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. No more than 25% of all programming broadcast during the broadcast week shall be drawn from the thriller genre.
5. 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.

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.