



Broadcasting Decision CRTC 2007-367

Ottawa, 12 October 2007

TVA Group Inc.
Across Canada

*Application 2007-0699-7, received 4 May 2007
Broadcasting Public Notice CRTC 2007-56
25 May 2007*

Mystère – Licence amendments

*The Commission **approves** an application to amend the broadcasting licence for the national, French-language Category 1 specialty service known as *Mystère* in order to reduce the minimum percentage of Canadian programming to be broadcast during the broadcast day and the evening broadcast period and in order to enable it to draw programs from category 7(d) Theatrical feature films aired on TV.*

Background

1. The Commission originally authorized the operation of the national, French-language Category 1 specialty programming undertaking known as *Mystère* (formerly 13^{ième} rue) in Decision 2000-469. As set out in its condition of licence relating to its nature of service, the service must be “devoted to mystery, fantasy suspense and horror.” The service commenced operations in October 2004.
2. *Mystère* was licensed in the context of the Commission’s digital licensing framework set out in Public Notice 2000-6. Consistent with that licensing framework, the Commission imposed conditions of licence requiring the licensee to abide by its commitments to the exhibition of and expenditures on Canadian programming. Specifically, the Commission required the licensee to devote a minimum of 50% of the broadcast day and a minimum of 50% of the evening broadcast period to the broadcast of Canadian programs.

The application

3. The Commission received an application from TVA Group Inc. (TVA Group) to amend the broadcasting licence for *Mystère* in order to reduce from 50% to 40% the minimum percentage of Canadian programming to be broadcast during the broadcast day and the evening broadcast period. The licensee also requested an amendment to its condition of licence relating to the nature of service so as to enable *Mystère* to draw up to 10% of the programming that it broadcasts during the broadcast week from program category 7(d) Theatrical feature films aired on TV.

4. TVA Group submitted that there is currently a greater scarcity of Canadian fantasy suspense and horror programming than it had contemplated in 2000. According to the licensee, a reduction of only 10% in *Mystère*'s Canadian content requirement would give the service the latitude it needs to present more popular programming, thereby permitting it to reach a broader audience. The licensee argued that maintaining the current conditions of licence would compromise the service's relevance and viability.
5. The licensee thus expressed its intention to innovate and improve the quality of programming aired by *Mystère* in order to better serve the public interest in Quebec and Canada. In order to better attain its objective, TVA Group is asking the Commission to amend its licence such that it is no longer limited by certain conditions of licence that have become overly restrictive. According to the licensee, a slight reduction in its Canadian content requirements coupled with the addition of programming from category 7(d) – with a particular focus on mystery, fantasy suspense and horror programming – would enable *Mystère*'s programmers to choose content that better reflects the public's preferences. Finally, in order to limit the potential impact on stations already licensed by the Commission, the licensee proposed to limit the amount of programming it would draw from category 7(d) to 10%.
6. The Commission received several interventions opposing this application, as well as an intervention commenting on the application. The interventions and the replies to the interventions are available on the Commission's Web site at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

Reduction in Canadian content requirement

7. Under the licensing framework established in Public Notice 2000-6, the Commission determined that Category 1 services would be a limited number of specialty services that make a strong contribution to the development, diversity and exhibition of Canadian programs. In return, digital Category 1 services would be granted protection from direct competition from other services with similar programming, including new digital Category 2 services and foreign services, and would be granted guaranteed access to digital carriage.
8. The Commission recognizes the importance of a broadcasting undertaking's commitments to the broadcast of and expenditures on Canadian programming, particularly those commitments made in the context of a competitive licensing process. At the same time, the Commission has taken a case-by-case approach in determining the Canadian programming requirements for specialty services, including those for Category 1 services, taking into consideration the nature of the service and the unique circumstances of the programming genre in question.

9. In the present case, the Canadian Film and Television Production Association (CFTPA), the Directors Guild of Canada (DGC), the Association des producteurs de films et de télévision du Québec (APFTQ) and TQS all opposed the application to reduce Canadian content requirements, noting, among other things, the recent implementation of the service, the integrity and equity of the competitive process, and the availability of the production of this type of programming.
10. TVA Group reminded the Commission that it approved, in Broadcasting Decision 2006-384, a request by Discovery Health Channel Canada ULC (Discovery Health) to reduce the minimum Canadian content requirement for its Discovery Health Channel from 65% to 35%. According to TVA Group, the problems experienced by Mystère are identical to those faced at that time by Discovery Health Channel, i.e., a small pool of subscribers and a limited amount of programming in the genre to which the channel is devoted.
11. Furthermore, TVA Group also argued, in regard to the lack of mystery and suspense programming, that although undubbed English-language programming is available, the licensing fee would be much higher with dubbing expenditures added. The licensee also noted that the programs that could be of interest to Mystère's target audience are difficult to find or no longer available because they have already been acquired by the competition. Moreover, TVA Group submitted that it is difficult to compete with licensing fees offered by analog channels and that not being licensed to broadcast feature films further reduces the amount of content available to Mystère.
12. Finally, TQS argued in its intervention that Mystère did not follow through on its commitment relating to co-production with its English-language counterpart, Mystery, and that Canadian programming expenditures during Mystère's first two years of operation were below that which TVA Group committed to spend in order to stimulate the creation of Canadian programs. In its reply, TVA Group submitted that it did not commit to airing original Canadian productions. The licensee added that it had exceeded the requirement imposed as a condition of its licence that it devote a minimum of 40% of its annual gross advertising, infomercial and subscription revenues from the previous broadcast year on Canadian programming.
13. Newly launched services are generally not profitable in their first few years of operation. The Commission notes that only one of the digital French-language Category 1 services currently in operation is profitable. By comparison, digital English-language Category 1 services are showing better financial results, despite the fact that some of them are not profitable even though they have been in operation for several years.
14. The Commission notes that when it approved the application by Discovery Health, its service had been in operation for five years. The Commission further notes that it denied a similar application in Broadcasting Decision 2004-167 because it wanted to ensure, on the one hand, that the applications it was receiving for licence amendments did not call

into question the integrity of the licensing process and, on the other hand, that favourable consideration to applications seeking to reduce commitments to Canadian content or seeking to significantly change the nature of a licensed service would be granted only under exceptional circumstances.

15. In the present case, the Commission recognizes, among other things, the licensee's difficult circumstances relating to weak penetration levels of French-language specialty services and to the costs associated with the dubbing of programs. Accordingly, the Commission **approves** the application by TVA Group Inc. to amend the broadcasting licence for *Mystère* in order to reduce the minimum Canadian content requirement during the broadcast day and during the evening broadcast period to 40%. Condition of licence number 2 is therefore replaced by the following **condition of licence**:

Exhibition of Canadian programs

2. In each broadcast year or portion thereof, the licensee shall devote to the broadcast of Canadian programs at least 40% of the broadcast day and at least 40% of the evening broadcast period.

16. The Commission notes, however, that this authority only applies to the current licence period. The Commission intends to reassess the overall situation at the next licence renewal for *Mystère*.

Addition of category 7(d) Theatrical feature films aired on TV

17. In its intervention, Astral Télé Réseaux and Les Chaînes Télé Astral (Astral) requested that the Commission's approval of this application be subject, by condition of licence, to restrictions on the number of feature films distributed per week in prime time and on the age of those feature films. In its reply to the intervention, the licensee stated that the restrictions proposed by Astral would exceed the requirement set out in Broadcasting Public Notice 2004-24 for category 2 series.
18. The Commission notes Astral's concerns and the licensee's arguments. The Commission considers that the addition of this program category, together with the licensee's proposed limit of 10% in each broadcast week, is sufficient to prevent *Mystère* from competing with existing services. The Commission further considers that approval of this part of the application could facilitate the exchange of programs with *Mystère*'s English-language counterpart *Mystery*, which already draws from this program category, without restrictions. Accordingly, the Commission **approves** the application to amend the condition of licence pertaining to *Mystère*'s nature of service in order to allow the licensee to draw up to 10% of the programs it broadcasts in each broadcast week from category 7(d) Theatrical feature films aired on TV. Condition of licence number 1 is therefore replaced by the following **condition of licence**:

Nature of service

1. a) The licensee shall provide a national, French-language Category 1 specialty television service consisting of mystery, fantasy suspense and horror.

b) The programming must be drawn exclusively from the following categories set out in Schedule I to the *Specialty Services Regulations, 1990*:

2 (a) Analysis and interpretation

(b) Long-form documentary

3 Reporting and actualities

7 (a) Ongoing dramatic series

7 (c) Specials, mini-series, made-for-TV feature films

7 (d) Theatrical feature films aired on TV

7 (e) Animated television programs and films

11 General entertainment and human interest

12 Interstitials

- The licensee shall devote not more than 10% of all programming broadcast during each broadcast week to programs drawn from category 7(d).

Conclusion

19. Given the financial data submitted by the licensee and the particular circumstances that are inherent to the French-language market, the Commission considers that it is appropriate to approve the amendments proposed by the licensee. Moreover, due to exceptional and unforeseeable circumstances, the Commission considers that these amendments do not call into question the integrity of the licensing process.
20. The Commission encourages the licensee to take full advantage of the possible synergies between the French-language channel *Mystère* and its English-language counterpart *Mystery*.

Secretary General

Related documents

- *Discovery Health Channel – Licence amendments*, Broadcasting Decision CRTC 2006-384, 21 August 2006
- *ichannel – Licence amendment*, Broadcasting Decision CRTC 2004-167, 26 April 2004
- *Revised procedures for processing applications for new digital Category 2 pay and specialty television services*, Broadcasting Public Notice CRTC 2004-24, 8 April 2004

- *13^{ième} Rue – a new specialty service*, Decision CRTC 2000-469, 24 November and 14 December 2000, amended by *Correction*, Decision CRTC 2000-469-1, 27 February 2001
- *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>