



Broadcasting Decision CRTC 2007-382

Ottawa, 18 October 2007

Campbell River TV Association
Campbell River, British Columbia

Application 2007-0542-8, received 10 April 2007
Public Hearing in the National Capital Region
27 August 2007

Video-on-demand service

*The Commission **approves** an application for a broadcasting licence to operate a regional video-on-demand (VOD) service largely composed of feature films.*

*The Commission **approves** a request to distribute programming that is produced by the licensee or a person related to the licensee up to a maximum of 5% of the inventory made available on its VOD undertaking in each broadcast year.*

*The Commission **denies** a request for authorization to allocate the entire 5% of the annual gross revenues generated by its VOD service to the resources of the community channel of its broadcasting distribution undertaking rather than to an independent Canadian production fund.*

Introduction

1. The Commission received an application by Campbell River TV Association (CRTV) for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve Campbell River, British Columbia.
2. The applicant indicated that the new VOD service would consist primarily of feature films, but may also include other types of programming such as long-form documentary, sports, drama and comedy, variety, and general entertainment and human interest. The programming would be predominantly in the English language.
3. As part of the application, CRTV requested a condition of licence that would permit it, as an exception to sections 3(2)(e) and 3(2)(f) of the *Pay Television Regulations, 1990* (the Pay Television Regulations), to distribute programming produced by CRTV or a person related to CRTV provided that such programming is limited to no more than 2% to 5% of the programming offered by the VOD service.
4. The applicant also requested a condition of licence authorizing it to allocate 5% of the annual gross revenues generated by its VOD service to the resources of the community channel of its broadcasting distribution undertaking (BDU) rather than to a Canadian production fund administered independently of its undertaking.

Service to persons who are deaf or hard of hearing

5. CRTV stated that it would provide closed captioning of its proposed VOD programming to serve the needs of viewers who are deaf or hard of hearing. The applicant indicated that it would ensure that 90% of all English-language programming is closed captioned by the beginning of the sixth year of the licence term. The applicant did not propose any specific commitments for the first five years of the licence term other than to endeavour to select programming that is closed captioned wherever possible.

Service to persons who are blind or whose vision is impaired

6. CRTV stated that it would make its VOD programming accessible to persons with visual impairments through audio description and endeavour to obtain titles with video description (also known as described video) whenever possible.

Interventions

7. The Commission received interventions by the Canadian Film and Television Production Association (CFTPA) and the Directors Guild of Canada (DGC). Both interveners opposed the applicant's request to allocate the entire 5% of the annual gross revenues generated by its VOD service to the community channel of its BDU. The DGC also opposed CRTV's request to add a condition of licence that would allow 2% to 5% of the total programming made available on its VOD undertaking to be produced by itself or a related person. These interventions, as well as the applicant's reply, may be found at the Commission's Web site at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

8. After reviewing the application and considering the positions of the parties to this proceeding, the Commission finds that two issues arise from this application:
 - Should CRTV be permitted to distribute programming that it produces or that is produced by a person related to CRTV provided that such programming is limited to no more than 5% of the programming offered by the VOD service?
 - Should CRTV be authorized to allocate 5% of the annual gross revenues generated by its VOD service to the resources of the community channel of its BDU rather than to a Canadian production fund administered independently of its undertaking?

Should CRTV be permitted to distribute programming that it produces or that is produced by a person related to CRTV provided that such programming is limited to no more than 5% of the programming offered by the VOD service?

9. Sections 3(2)(e) and 3(2)(f) of the Pay Television Regulations generally prohibit a licensee from distributing programming, other than filler programming, that is produced either by the licensee or by a person related to the licensee.

10. Nevertheless, in keeping with the Commission's general approach to grant VOD licensees the flexibility to experiment with the types of programming they offer, the Commission considers that it is appropriate to permit CRTV to distribute programming that is produced by the licensee or a person related to the licensee up to a maximum of 5% of the inventory made available on its VOD undertaking in each broadcast year. The Commission **approves** this request, and a **condition of licence** is set out in the appendix to this decision.

Should CRTV be authorized to allocate 5% of the annual gross revenues generated by its VOD service to the resources of the community channel of its BDU rather than to a Canadian production fund administered independently of its undertaking?

11. According to Public Notice 2000-172, a licensee of a VOD service must contribute a minimum of 5% of the annual gross revenues earned by its VOD programming undertaking to an existing Canadian program production fund administered independently of its undertaking.
12. The applicant argued that its request should be approved because CRTV is a not-for-profit organization and its community channel provides the only local television programming in Campbell River. CRTV also argued that 5% of the annual gross revenues generated by its proposed VOD would be of greater use to its community channel than to a national production fund. Finally, CRTV was of the view that the Commission set a precedent by allowing it to devote 5% of gross revenues derived from its BDU broadcasting activities to local expression, in the form of its community channel, on an annual basis.
13. The CFTPA and the DGC indicated that in the past the Commission has denied similar applications from other not-for-profit organizations. Both interveners also doubted the applicant's statement that the 5% of the annual gross revenues would be of greater use to the community channel than to a national production fund. Both also pointed out that previous Commission decisions granting permission to allocate 5% of the annual gross revenues derived from the BDU service are not as relevant to this application as those decisions in which requests were made to allocate 5% of the annual gross revenues generated by a VOD service.
14. The Commission has considered the arguments of the applicant and the interveners but is not persuaded that an exception to the VOD licensing framework is warranted in the circumstances of the present case. Accordingly, the Commission **denies** the applicant's request to allocate 5% of the annual gross revenues generated by its VOD service to the resources of the community channel of its BDU rather than to a Canadian production fund administered independently of its undertaking. A **condition of licence** requiring CRTV to contribute a minimum of 5% of the gross annual revenues by its VOD service to an existing, independently administered Canadian program production fund is set out in the appendix to this decision.

Conclusion

15. Based on the foregoing, the Commission considers that the application complies with the licensing framework for VOD services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by Campbell River TV Association for a broadcasting licence to operate a regional video-on-demand programming undertaking to serve Campbell River, British Columbia. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related document

- *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 2007-382

Terms, conditions of licence, expectations and encouragement

Terms

Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve Campbell River, British Columbia

The licence will expire 31 August 2014.

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 18 October 2009. 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*, as amended from time to time, with the exception of sections 3(2)(e) (programming produced by the licensee), 3(2)(f) (programming produced by a person related to the licensee) and 4 (logs and records).
2. The licensee is authorized, as an exception to sections 3(2)(e) and 3(2)(f) of the *Pay Television Regulations, 1990*, to distribute programming, other than filler programming, that is produced by the licensee or by a person related to the licensee, but such programming shall not exceed 5% of the inventory made available to subscribers in each broadcast year.
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 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.
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 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”.
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 at least 90% of the programming in its inventory, beginning no later than 1 September 2013.
11. 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. 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.
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.

Expectations and encouragement

Program offering in both official languages

The Commission notes that the applicant 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.

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.