



Broadcasting Decision CRTC 2007-417

Ottawa, 7 December 2007

Sex-Shop Television Inc.

Across Canada

Application 2007-0674-9, received 30 April 2007

Public Hearing in Kelowna, British Columbia

30 October 2007

Vanessa – Category 2 pay television service

*In this decision, the Commission **approves** an application for a broadcasting licence to operate a new Category 2 pay television programming undertaking.*

The application

1. The Commission received an application by Sex-Shop Television Inc. (Sex-Shop Television) for a broadcasting licence to operate a national French-language Category 2¹ pay television programming undertaking to be known as Vanessa.
2. The applicant proposed to offer an adult pay television service dedicated to the themes of sex appeal, sensuality, eroticism and sexuality. Programming could also include documentaries, news coverage and magazine programs focussing on the industries associated with these themes and the personalities involved in these industries.
3. All programming would be drawn from the following categories set out in item 6 of Schedule 1 to the *Pay Television Regulations, 1990* (the Regulations): 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 7(a) Ongoing dramatic series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy; 7(g) Other drama; 8(a) Music and dance other than music video programs or clips; 8(b) Music video clips; 8(c) Music video programs; 9 Variety; 10 Game shows; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 15 Filler programming.
4. The licensee proposed to devote not more than 10% of its broadcast week to programming from category 7(d) (Theatrical feature films aired on TV).

¹ Category 2 services are defined in Public Notice 2000-171.

5. The Commission notes that the applicant proposed to draw programming from Category 14 (Infomercials, corporate and promotional videos), as set out in item 6 of Schedule 1 to the *Specialty Service Regulations, 1990*. However, the Commission notes that Category 2 pay services are not authorized under the Regulations to distribute programming containing advertising, and notes that, as set out in item 6 of Schedule 1 to the Regulations, programming from Category 14 (Infomercials, corporate and promotional videos) is not among the programming choices available to Category 2 pay services. As a result, Vanessa can distribute programming only from the categories set out in the appendix to this decision, which excludes programming from Category 14 (Infomercials, corporate and promotional videos).
6. The Commission received two interventions opposing the application, from David Snow and from Eva Kovacic-Lee, both of whom contended that the applicant's proposed adult programming offends their sensibilities and goes against their personal values.

Commission's analysis and determinations

7. 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 Sex-Shop Television Inc. for a broadcasting licence to operate the national French-language Category 2 pay television programming undertaking, Vanessa. The licence will be subject to the **conditions** set out in Public Notice 2000-171-1 as well as to the **conditions** set out in the appendix to this decision.
8. The Commission reminds the applicant that if it wishes at any time to enter into an agreement with non-Canadian independent producers regarding the supply of programming or the use of a licence trademark, it must comply 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 Direction). Accordingly, the Commission has imposed a **condition of licence**, as set out in the appendix to this decision, that requires the licensee to file, for the Commission's prior review, a copy of any programming supply agreement or licence trademark agreement it intends to enter into with a non-Canadian party, in order to ensure that the licensee complies at all times with the Direction.
9. The Commission further notes that it has issued licences for adult programming numerous times in the past, imposing conditions of licence aimed at ensuring that the programming meets general community standards within the context of a discretionary service intended for an informed public.

10. The Commission reminds the applicant and distributors that the service, due to the adult nature of the programming, may only be distributed at the specific request of the subscriber and that distributors are not permitted to package the service in such a way that subscribers are obligated to purchase it in order to purchase any other programming service, other than an adult programming service. Furthermore, distributors are required to take measures to fully block the reception of both the audio and video portions of the service to subscribers that request it not to be receivable in their home, in either unscrambled or scrambled form.

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
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 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 2007-417

Terms, conditions of licence and expectation for the national Category 2 pay television programming undertaking Vanessa

Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- 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 7 December 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 2014.

Conditions of licence

1. The licence will 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 French-language Category 2 pay television programming service devoted to the themes of sex appeal, sensuality, eroticism and sexuality. Programming could also include documentaries, news coverage and magazine programs focussing on the industries associated with these themes and the personalities involved in these industries.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of Schedule 1 to the *Pay Television Regulations, 1990*, as amended from time to time:

- 2 a) Analysis and interpretation
 - b) Long-form documentary
 - 3 Reporting and actualities
 - 7 Drama and comedy
 - a) Ongoing dramatic 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
 - 8 a) Music and dance other than music video programs or clips
 - b) Music video clips
 - c) Music video programs
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 15 Filler programming
4. Not more than 10% of all programming broadcast in each broadcast week shall be drawn from Category 7(d).
 5. During each broadcast year, the licensee shall devote not less than 20% of the broadcast day and not less than 20% of the evening broadcast period to Canadian programming.
 6. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The reporting of Canadian programming expenditures*, Public Notice CRTC 1993-93, 22 June 1993, in *Additional clarification regarding the reporting of Canadian programming expenditures*, Public Notice CRTC 1993-174, 10 December 1993, and in *Incentives for original French-language Canadian television drama*, Broadcasting Public Notice CRTC 2005-8, 27 January 2005, as may be amended from time to time:
 - a) In each broadcast year of the licence term following the first year of operation, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 22% of the subscription revenues derived from the operation of this service during the previous broadcast year. In the first broadcasting year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs an amount equal to or greater than \$150,000.

- b) In each broadcast year of the licence term following the first year of operation, excluding the final year, the licensee may expend an amount on Canadian programs that is up to ten percent (10%) less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.
 - c) In each broadcast year of the licence term following the first year of operation, where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
 - i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
 - ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
 - d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
7. The licensee shall adhere to the provisions regarding adult programming set out in section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003.
8. 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.

Expectation

The Commission expects the applicant to adhere to its internal policy on adult programming.