



Broadcasting Decision CRTC 2007-50

Ottawa, 2 February 2007

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

Application 2006-0848-2

Public Hearing in the National Capital Region

14 November 2006

Centre Stage HD – Category 2 specialty service

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

The application

1. The Commission received an application by High Fidelity HDTV Inc., on behalf of a corporation to be incorporated (High Fidelity), for a broadcasting licence to operate a national, English-language Category 2¹ high definition (HD) specialty programming undertaking to be known as Centre Stage HD.
2. The applicant proposed to offer a service that would consist of programming featuring classical, opera, jazz, blues, rhythm and blues, folk, soul, world and roots music, as well as other underserved musical niches. The programming would include concerts, festivals, documentaries, interview programs, mini-series, specials and films related to such music.
3. All of the programming would be drawn from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*: 2(a) Analysis and interpretation; 2(b) Long-form documentary; 5(b) Informal education/Recreation and leisure; 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 8(a) Music and dance other than music video programs or clips; 8(b) Music video clips; 8(c) Music video programs; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.
4. The applicant proposed that in each year of the licence term, 100% of the programming of Centre Stage HD would be broadcast in HD format.

¹ The Category 2 services are defined in *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.

Interventions

5. The Commission received interventions opposing the application by Rogers Cable Communications Inc. (Rogers), MusiquePlus Inc. and CHUM Limited (CHUM), as well as comments by Astral Television Networks (Astral), a division of Astral Broadcasting Group Inc., and the Canadian Independent Record Production Association (CIRPA). Rogers also opposed the six other applications by High Fidelity for national, English-language Category 2 HD services considered in this proceeding.

Rogers

3. Rogers, the licensee of cable broadcasting distribution undertakings serving customers in Ontario, New Brunswick, Newfoundland and Labrador, questioned the Commission's policy of including unlaunched Category 2 services in its application of the competitiveness test for assessing requests to add foreign English- and French-language services to its lists of eligible satellite services (the Lists), as set out in Public Notice CRTC 2000-173.² Under that policy, the Commission precludes the addition of a foreign service that can be considered either totally or partially competitive with any Canadian specialty or pay television services whose licence applications have been approved by the Commission, including launched and unlaunched Category 2 services.
4. Rogers argued that the approval of all High Fidelity's applications would result in the applicant's occupying a wide range of programming genres. Rogers further contended that High Fidelity could take up to five years to implement these services, thus preventing the addition of any similar non-Canadian programming services to the Lists for that period and depriving Canadians of diversity and choice in digital programming services. Finally, Rogers submitted that the Commission should reconsider its policy framework governing Category 2 services before granting additional licences to High Fidelity.

MusiquePlus Inc.

5. MusiquePlus Inc. is the licensee of the national, French-language specialty services MusiquePlus and MusiMax. MusiquePlus Inc. submitted that the applicant's proposed nature of service is imprecise and that it has not established sufficient safeguards to prevent the proposed service from entering into direct competition with existing Canadian specialty services focused on music, such as MusiquePlus, MusiMax, MuchMusic and MuchMoreMusic. MusiquePlus Inc. asked the Commission to deny High Fidelity's application on this basis.

² *Call for proposals to amend the lists of eligible satellite services through the inclusion of additional non-Canadian services eligible for distribution on a digital basis only*, Public Notice CRTC 2000-173, 14 December 2000.

CHUM

6. CHUM submitted that the applicant's broad nature of service definition and the extensive list of program categories proposed in the application could result, in the absence of any limitations, in Centre Stage HD's becoming directly competitive with one or both of CHUM's existing analog specialty services MuchMusic and Bravo! Like MusiquePlus Inc., CHUM was of the view that High Fidelity has not established sufficient safeguards to prevent such an eventuality. Specifically, CHUM expressed concern over the fact that the application does not define an "underserved musical niche" or how much of Centre Stage HD's programming will be devoted to each musical niche and, in particular, to category 8(b). CHUM also stated that the nature of the proposed service is insufficiently clear for it to determine whether Centre Stage HD will be an arts service that will be directly competitive with Bravo!, a broad-based arts channel featuring performance and drama programming, as well as discussion and documentaries. For these reasons, CHUM asked the Commission to deny High Fidelity's application.

Astral

7. Astral operates The Movie Network and MPix, two English-language pay television programming undertakings that provide general interest theatrical movie-based services in eastern Canada. Astral noted that, under the Commission's licensing framework for new specialty and pay services, "the Commission has, in authorizing Category 2 applications, established restrictions on certain proposed services to ensure that they will not be directly competitive with existing pay, specialty and Category 1 digital channels." Astral proposed that Centre Stage HD be subject, by condition of licence, to a 15% limitation on programs from category 7(d).

CIRPA

8. CIRPA submitted that there is enough high quality Canadian product available in the genres proposed by the applicant to meet a 30% minimum Canadian content obligation immediately, rather than gradually over a three-year time period as the applicant proposed. CIRPA requested that the Commission impose a condition of licence requiring that a minimum of 30% of the programming be Canadian upon launch of the service.

Applicant's response

9. With regard to Rogers' intervention, High Fidelity maintained that the policy issues raised by Rogers are beyond the scope of its application for the proposed Category 2 service. High Fidelity added that Rogers' request should be addressed in the context of the Commission's review of the regulatory framework for discretionary services announced in *CRTC 3-Year Work Plan 2006-2009*, 28 April 2006 (the 3-Year Work Plan).

10. In response to the views submitted by MusiquePlus Inc. and CHUM to the effect that Centre Stage HD's proposed nature of service description is too broad and that it has not provided enough safeguards to ensure that the service will not be directly competitive with MusiquePlus, MusiMax, MuchMusic, MuchMoreMusic and/or Bravo!, High Fidelity specified that Centre Stage HD will neither be a mainstream music video service based on the telecasting of short music video clips like MusiquePlus, MusiMax, MuchMusic and MuchMoreMusic, nor a broad-based arts channel like Bravo! However, as a safeguard with respect to the former, High Fidelity indicated its willingness to accept a condition of licence requiring that not more than 10% of all programming be drawn from category 8(b).
11. High Fidelity also indicated its willingness to abide by a condition of licence requiring that not more than 15% of all programming be drawn from category 7(d) as proposed by Astral.
12. Finally, in response to CIRPA's request that the Commission impose a 30% Canadian content requirement upon launch of the service, High Fidelity stated that the Commission should not depart from the Commission's current policy with respect to the licensing of Category 2 pay and specialty services, particularly given that Centre Stage HD will not be a music video specialty service.

Commission's analysis and determinations

16. While the Commission has noted the concerns raised by Rogers, the Commission finds that these issues are not directly relevant to its consideration of the present application. As announced in the 3-Year Work Plan, the Commission intends to review the framework for discretionary services and is of the view that the matters raised in Rogers' intervention may be more appropriately discussed in that context.
17. With respect to CIRPA's intervention, the Commission notes that as part of the open-entry approach to licensing Category 2 services established in *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission established basic licensing criteria and programming obligations that apply to all Category 2 undertakings. The Commission sees no reason to depart from these in this case.
18. The Commission notes that the applicant indicated that it would abide by a 10% limitation on programming from category 8(b) and a 15% limitation on programming from category 7(d). The Commission is imposing **conditions of licence** to that effect, as set out in the appendix to this decision. The Commission is of the view that the above-noted conditions, combined with the genres of music proposed by the applicant, will ensure that the proposed service is not directly competitive with MusiquePlus, MusiMax,

MuchMusic, MuchMoreMusic, The Movie Network and MPix. Further, although music comprises part of Bravo!'s schedule, the Commission finds that the type of programming proposed by the applicant will not be directly competitive with Bravo! given that Bravo!'s genre is more broadly based and includes other arts programming, such as dance, cinema and the visual arts, in addition to music.

19. In light of the above, the Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001 (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 high definition specialty programming undertaking Centre Stage HD.
20. The Commission reminds the applicant that if it wishes to enter at any time 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.
21. The licence will expire 31 August 2013 and 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.

Issuance of the licence

22. 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 2 February 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.

Secretary General

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 2007-50

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, English-language Category 2 high definition specialty programming service devoted to classical, opera, jazz, blues, rhythm and blues, folk, soul, world and roots music, as well as other underserved musical niches. The programming will include concerts, festivals, documentaries, interview programs, mini-series, specials and films related to such music.
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:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 5 (b) Informal education/Recreation and leisure
 - 7 (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - 8 (a) Music and dance other than music video programs or clips
 - (b) Music video clips
 - (c) Music video programs
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. No more than 15% of all programming broadcast during the broadcast week shall be drawn from category 7(d).
5. No more than 10% of all programming broadcast during the broadcast week shall be drawn from category 8(b).
6. 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.

