



Broadcasting Decision CRTC 2007-88

Ottawa, 19 March 2007

TVA Group Inc.
Across Canada

*Application 2006-0984-4
Public Hearing in the National Capital Region
18 December 2006*

Première Loge – 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 licence will be issued once the applicant has met the requirements specified at the end of this decision.

The application

1. The Commission received an application by TVA Group Inc. (TVA) for a broadcasting licence to operate a national French-language Category 2¹ specialty programming undertaking to be known as Première Loge.
2. The applicant proposed to offer a service that would be devoted to documentaries, performances, mini-series and movies. All of the programming would be drawn from the following categories set out in Item 6 of Schedule I to the *Pay Television Regulations, 1990*: 2(b) Long-form documentary; 7(a) Ongoing drama 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; 9 Variety; 11 General entertainment and human interest; and 12 Interstitials.
3. The applicant proposed that a maximum of 25% of all programming broadcast during the broadcast week shall be from category 7(d).

Interventions

4. The Commission received a joint intervention in opposition to this application from Astral Television Networks and Les Chaînes Télé Astral, divisions of Astral Broadcasting Group Inc., and TELETOON Canada Inc. (the interveners).

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.

5. According to the interveners, if this application were approved as submitted, there would be no safeguard to prevent the applicant from developing programming that would compete directly with that of a number of existing specialty and pay television services, including Super Écran, Séries+, Canal D, Télétoon and VRAK.TV, thus contravening the Commission's policy set out in *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6).
6. The interveners noted that in *Revised procedures for processing applications for new digital Category 2 pay and specialty television services*, Broadcasting Public Notice CRTC 2004-24, 8 April 2004 (Public Notice 2004-24), the Commission decided henceforth to require that Category 2 service licence applicants:
 - identify all existing specialty and pay services (except Category 2 services) that could be considered partially competitive with the service they are proposing (i.e. those with programming at least 10% of which is similar); and
 - demonstrate, with supporting scientific evidence, why the proposed service should not be considered directly competitive with any of the services identified in accordance with the preceding requirement.
7. The interveners noted that TVA defines the nature of the service as "a national French-language Category 2 pay television service including documentaries, shows, mini-series and movies," but is seeking authorization to broadcast programs in all the drama subcategories from 7(a) to 7(g).
8. The interveners further noted that TVA, in response to question 4.4 on the Commission's application form, failed to identify a number of existing specialty services, such as Séries+, Canal D, Télétoon and VRAK.TV, that should be considered partially competitive with the proposed service.
9. The interveners submitted that Première Loge's four main types of programming (movies, other drama programs, performances and documentaries) are the same as those of Super Écran, the programming of which focuses mainly on feature films made for movie theatres, but which also broadcasts made-for-TV movies, mini-series, drama series, performances, variety shows and documentaries.
10. In the event that the Commission decided to approve TVA's application, the interveners requested that the Commission limit the extent to which the proposed service would be allowed to compete with existing specialty and pay television services (other than Category 2 services) by imposing conditions of licence so as to:
 - limit the percentage of the broadcast day and the evening broadcast period that the licensee may devote, on a weekly basis, to the broadcasting of category 7(d) programs (Theatrical feature films) to ensure that the proposed service does not compete directly with Super Écran;

- limit the percentage of the licensee's weekly programming that may be devoted to all programming in category 7 (Drama) to ensure that the proposed service will not compete directly with Séries+;
- limit the percentage of weekly programming that the licensee may devote to category 2(b) programs (Long-form documentaries) to ensure that the proposed service will not compete directly with Canal D;
- limit the percentage of weekly programming that the licensee may devote to category 7(e) programs (Animated television programs and films) to ensure that the proposed service will not compete directly with Télétoon; and
- limit the percentage of the weekly programming that the licensee may devote to programming aimed at children and youth 2 to 17 years of age to ensure that the proposed services will not compete directly with VRAK.TV.

Applicant's response

11. TVA stated that the Category 2 French-language service to be called Première Loge would not compete directly with the programming services named by the interveners for a number of reasons:
 - The nature of the proposed service and the Category 2 status differentiate Première Loge from the applications reviewed last year by the Commission, which were aimed at obtaining new general interest pay television licences. In *Applications for new pay television services*, Broadcasting Decision CRTC 2006-193, 18 May 2006 (Decision 2006-193), the issue was Boom TV, a real competitor of Super Écran;
 - Première Loge has already been approved by the Commission in *Première Loge*, Decision CRTC 2000-588, 24 November 2000 (Decision 2000-588), but it was not possible to launch it within the prescribed time; and
 - The audiovisual landscape has not changed. The purpose of the changes made by the Commission is entirely procedural. Because of the large number of applications for Category 2 licences, the Commission transferred the burden of demonstrating competition from its staff to the applicant.
12. Contrary to what the interveners called for in their intervention, TVA was of the view that the Commission should not impose any additional condition of licence on Première Loge.
13. With regard to precisely what distinguishes Première Loge from each of the channels named by the interveners, TVA maintained that:

- Super Écran is a pay television undertaking that focuses mainly on theatrical feature films (category 7(d)). The proposed nature of the licence for Première Loge is such that no more than 25% of the programming would be drawn from this category.
- Canal D is a channel that focuses on the presentation of documentaries, which must make up 50% of its schedule. Première Loge does not intend to devote more than 10% of its broadcast week to documentaries.
- Télétoon offers animated programs whereas Première Loge does not intend to devote more than 10% of its broadcast week to animated programs.
- VRAK.TV offers programs for children and adolescents, who are not the target audience of Première Loge. Therefore, Première Loge will not compete with VRAK.TV.

Commission's analysis and determinations

14. In Public Notice 2000-6, the Commission adopted an approach based on competition and open entry for the granting of licences for Category 2 services. The Commission does not take into account the impact that a new Category 2 service could have on an existing service in the same category, but it does seek to ensure that newly authorized Category 2 services do not compete directly with an existing specialty or pay service, including new Category 1 services.
15. In Decision 2000-588, in accordance with the policy then in place, the Commission approved an application from TVA to operate a service of the same type and involving the same programming categories, except for category 15 (Filler programming), which is replaced with category 12 (Interstitials).
16. In their intervention, the interveners maintain that Public Notice 2004-24 changed the Commission's analysis criteria, such that the TVA application to operate a new Category 2 pay television programming undertaking, which had been approved in Decision 2000-588, is no longer valid today. The Commission notes that in Public Notice 2004-24 it decided to implement changes to promote more effective and efficient use of its resources in the processing of Category 2 applications.
17. The interveners also point to the fact that the Commission recently examined the state of French-language pay television and concluded that the potential advantages associated with the arrival of a competitor to Super Écran outweighed the risks incurred, given the relatively small size of the French-language market. However, the Commission notes that Decision 2006-193 referred to an application to operate a pay television service that would have had the benefit of mandatory distribution and that the analysis framework for this type of application differs from that for Category 2 services.

18. TVA stated that the Première Loge service that it proposes will provide a pay service consisting of documentaries, performances, mini-series and movies. However, the Commission is of the view that the commitments made by TVA to specify the nature of the Première Loge service are not specific enough to prevent the service from competing directly with a similar analog pay or specialty service or an existing Category 1 digital service.
19. Moreover, the Commission notes that TVA is prepared to limit to 25% of the broadcast week its category 7(d) programming and that it does not intend to present documentaries and animated programs for more than 10% of the broadcast week in each of those categories in order not to compete with Canal D and Télétoon.
20. Subsequent to analysis of this application and in accordance with Public Notice 2000-6, the Commission is of the view that the application is in compliance with the applicable terms and 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 (Public Notice 2000-171-1). Consequently, the Commission **approves** the application of TVA Group Inc. for a broadcasting licence to operate the national French-language Category 2 pay television undertaking Première Loge.
21. However, in order to ensure that the proposed service not compete directly with existing Category 1 digital or analog pay or specialty services, the Commission has imposed **conditions of licence**, as set out in the appendix to this decision, limiting programming in categories 2(b), 7(d) and 7(e).
22. 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.
23. 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

24. 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 19 March 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 2007-88

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 documentaries, performances, mini-series and movies.
3. The programming shall be drawn exclusively from the following categories, as set out in Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time:
 - 2 (b) Long-form documentary
 - 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
 - 8 (a) Music and dance other than music video programs or clips
 - 9 Variety
 - 11 General entertainment and human interest
 - 12 Interstitials
4. No more than 25% of all programming broadcast during the broadcast day shall be drawn from category 7(d).
5. The licensee shall not broadcast category 7(d) programs between 7:30 p.m. and 10:30 p.m.
6. No more than 10% of all programming broadcast during the broadcast week shall be drawn from category 2(b).
7. No more than 10% of all programming broadcast during the broadcast week shall be drawn from category 7(e).

8. During each broadcast year, the licensee must devote to the broadcasting of Canadian programming at least 30% of the broadcast day and the evening broadcast period for the first four years of the licence term and at least 35% until the expiry of the licence.
9. 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 20% of the subscription revenues derived from the operation of this service during the previous broadcast year, and at least \$2,852,000 in the first year of operation.
 - 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.
10. 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.
11. 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.