



Broadcasting Decision CRTC 2008-170

Ottawa, 13 August 2008

1058204 Alberta Ltd.
Across Canada

Application 2007-1524-5, received 30 October 2007
Public Hearing in the National Capital Region
13 May 2008

Northern Peaks – Category 2 pay television service

*The Commission **approves** an application for a broadcasting licence to operate a new Category 2 pay television programming undertaking.*

1. 1058204 Alberta Ltd. filed an application for a broadcasting licence to provide Northern Peaks, a national, English-language Category 2 pay television service that would consist of adult programming. The applicant stated that the proposed service would be Canada's first adult video channel offering significant Canadian adult content. The applicant indicated that it would also air the adult versions of Real Productions' cable television series and produce its own adult movies, events and series.
2. The Commission did not receive any interventions in connection with this application.
3. 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 1058204 Alberta Ltd. for a broadcasting licence to operate the national, English-language Category 2 pay television programming undertaking Northern Peaks. The terms and **conditions of licence** are set out in the appendix to this decision.
4. The Commission reminds the applicant and distributors that, due to the adult nature of the programming, this service shall only be distributed at the specific request of the subscriber. 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. 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

- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 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>.

Appendix to Broadcasting Decision CRTC 2008-170

Terms, conditions of licence and expectations for the Category 2 pay television programming undertaking Northern Peaks

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 13 August 2011. 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 will provide a national, English-language Category 2 pay television service consisting of adult programming.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of 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 dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - 10 Game shows
 - 11 General entertainment and human interest

4. During each broadcast year, the licensee shall devote not less than 50% of the broadcast day and not less than 50% of the evening broadcast period to Canadian programming.
5. 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 English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, 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 25% of the subscription revenues derived from the operation of this service during the previous broadcast year. In the first broadcast 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 \$1,000,000.
 - 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 a 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.

6. The licensee shall caption 100% of its programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
7. 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.
8. The licensee shall adhere to 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.

For the purposes of these conditions:

“broadcast day” means the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission;

“broadcast month” means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast days in a month;

“broadcast year” means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast months in a 12-month period, beginning on September 1 in any year;

“expend” and “expenditure” means actual cash outlay.

Expectations

Adult programming

The Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission. The Commission therefore expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.