



Broadcasting Decision CRTC 2008-290

Ottawa, 20 October 2008

TBayTel

Thunder Bay and surrounding areas, Ontario

Application 2008-0169-8, received 31 January 2008

Public Hearing in the National Capital Region

7 July 2008

Video-on-demand service

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

Introduction

1. The Commission received an application by TBayTel for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve Thunder Bay and surrounding areas.
2. The Commission received an intervention in support of this application.

Proposed Service

3. The applicant indicated that the new VOD service would consist primarily of feature films but may also include other types of programming such as children's videos, music videos, short films and television shows. The applicant also indicated that, although the programming would be predominantly in the English language, it would offer programming in the French language and in other languages in accordance with audience demand.
4. TBayTel 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 100% of all English-language titles in its inventory are closed captioned, beginning in the sixth year of the licence term. TBayTel also indicated that a minimum of 50% of all English-language titles in its inventory would be closed captioned, beginning in the first and second year of the licence term.
5. TBayTel further stated that it would provide accessibility to its VOD programming for persons with visual impairments through audio description and would endeavour to obtain titles with video description (also known as described video) from content providers, subject to availability.

Commission's analysis and determinations

6. The Commission finds that the issues to be determined relate to the eligibility of the applicant to hold a broadcasting licence and to the applicant's internal policy on adult programming.

Eligibility of the applicant to hold a broadcasting licence

7. The Commission notes that TBayTel is a telephone company owned by a municipality.
8. On 27 June 1985, the Federal Government (Government) issued *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, SOR/85-627 (the Direction). Pursuant to section 3 of the Direction, the Commission was prohibited from granting broadcasting licences to "municipal governments." The definition of "municipal government" included any "public body empowered to perform a function of government in a province."
9. On 19 April 2007, the Government issued *Order Amending the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, SOR/2007-74 (the Amended Direction). Pursuant to the Amended Direction, the definition of "municipal government" was amended as to exclude "independent carriers." The definition currently reads as follows:

"municipal government" means any municipal or public body empowered to perform a function of government in a province, but does not include an independent carrier.

10. "Independent carrier" is defined in the Amended Direction to include:

... that is a Canadian carrier, within the meaning of subsection 2(1) of the *Telecommunications Act*, whose transmission facilities are operated by a public utility service provider, where

 - (i) the Commission determines that the public utility service provider is not directly controlled by the governing body of the municipal government; and
 - (ii) the public utility service provider enjoys freedom of expression and journalistic, creative and programming independence in the pursuit of its object and exercise of its powers.
11. In effect, municipally-owned public utility service providers are now permitted to hold broadcasting licences provided that the above requirements have been met. The Commission finds that, in the present case, TBayTel meets the requirements set out in the Amended Direction and is therefore eligible to hold a broadcasting licence.

TBayTel's internal policy on adult programming

12. In regard to adult programming, the Commission notes that TBayTel included, as part of its application, a proposed internal policy on adult programming, as contemplated in Broadcasting Public Notice 2003-10. However, to be considered complete, the proposed policy requires additional details regarding the acquisition, promotion and distribution of adult programming. The Commission therefore expects TBayTel to file a revised version of its internal policy with the Commission at least one month prior to the implementation of the service.

Conclusion

13. In light of the above, the Commission is satisfied that the application is in conformity with the licensing framework for VOD services set out in Public Notice 2000-172. Accordingly, the Commission **approves** the application by TBayTel for a broadcasting licence to operate a regional VOD programming undertaking to serve Thunder Bay and surrounding areas, Ontario. The terms and **conditions of licence** are set out in the appendix to this decision.
14. The Commission notes the applicant's commitments with respect to closed captioning. However, consistent with the framework set out in Broadcasting Public Notice 2007-54, the Commission is of the view that the service should provide captioning for 100% of its programs beginning in its first year of operation. A **condition of licence** to that effect is set out in the appendix to this decision.
15. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *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
- *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 2008-290

Terms, conditions of licence and expectations

Terms

Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve Thunder Bay and surrounding areas, Ontario.

The licence will expire 31 August 2015.

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 20 October 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.

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of section 4 pertaining to logs and records.
2. 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.
3. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.
4. 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 video-on-demand 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.

5. 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.”
6. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
 7. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
 8. 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.
 9. 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.
 10. The licensee shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, 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.
 11. 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. 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 *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. 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.

Expectations

Program offering in both official languages

The Commission expects the licensee to make its program offering available to customers in both official languages. The Commission expects the licensee to adhere to its commitment to offer programming in the French language in accordance with audience demand.

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 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.

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.