



Broadcasting Decision CRTC 2008-341

Ottawa, 5 December 2008

Clovys Communications Inc.
Across Canada

Application 2008-0748-0, received 29 May 2008
Public Hearing in the National Capital Region
24 September 2008

Chaîne de Divertissement Clovys Entertainment Channel – Category 2 specialty service

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

Introduction

1. Clovys Communications Inc. (Clovys) filed an application for a broadcasting licence to operate a national, French-language Category 2 specialty service to be known as Chaîne de Divertissement Clovys Entertainment Channel. The service would be devoted to urban, world and Latin music and black culture.
2. As part of its initial application, Clovys proposed a condition of licence requiring that it draw at least 65% of its programming over the broadcast year from categories 8(b) Music video clips and 8(c) Music video programs.
3. The Commission has implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing Category 1 or analog pay or specialty television service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question. Where appropriate, in setting conditions of licence, the Commission prevents or limits the broadcast of specific types of programming to ensure that the service is not, nor will become, directly competitive with any existing Category 1 or analog pay or specialty television service.
4. The Commission received interventions in opposition to the application from Musique Plus inc. and from Astral Television Networks (Astral). The interventions and the applicant's reply can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

5. After considering the positions of the applicant and the interveners, the Commission finds that the primary issue to be determined in its evaluation of this application is whether the proposed service would be directly competitive with existing Category 1 or analog pay or specialty services.

Would Chaîne de Divertissement Clovys Entertainment Channel be directly competitive with existing Category 1 or analog pay or specialty television services?

6. The Commission notes the intervention in opposition from Musique Plus inc., which stated that nothing in the nature of service as proposed by the applicant would prevent the new service from developing programming that would be directly competitive with the existing analog specialty television services Musique Plus and Musimax. According to Musique Plus inc., the information provided by Clovys is insufficient and unclear and offers no evidence that the new service would not be competitive with these services.
7. The Commission further notes that Astral requested that the applicant be required to comply with a 15% limit on the broadcast of programming drawn from category 7(d) Theatrical feature films aired on TV, so as to ensure that the proposed service would not be directly competitive with the analog pay television service Super Écran.
8. In reply to the interventions, the applicant pointed out that it does not believe that its service would be competitive with Musique Plus or Musimax, given its focus on black (urban) music and world music. Clovys explained that the new service would target a multicultural audience, that on-air staff would primarily reflect the targeted viewers, and that the service would be very involved in the artistic activities of disadvantaged cultural communities in major urban centres in Quebec and Canada, thus distinguishing it from the more general nature of Musique Plus and Musimax.
9. The Commission also notes that the applicant indicated that it would be prepared to accept a condition of licence stating that no more than 15% of the programming broadcast would be drawn from category 7(d).
10. The Commission considers that the nature of service proposed by Clovys is sufficiently different from that of the analog television specialty services Musique Plus and Musimax to ensure that Chaîne de Divertissement Clovys Entertainment Channel would not be directly competitive with these services.
11. 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 Clovys Communications Inc. for a broadcasting licence to operate the national, French-language Category 2 specialty programming undertaking Chaîne de Divertissement Clovys Entertainment Channel. The terms and **conditions of licence**, including a **condition of licence** limiting the broadcast of programming drawn from category 7(d) to 15% of the broadcast week and a **condition de licence** requiring that no less than 65% of the programming broadcast during the

broadcast week be drawn from categories 8(b) and 8(c), are set out in the appendix to this decision.

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
- *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 2008-341

Terms and conditions of licence for the Category 2 specialty programming undertaking Chaîne de Divertissement Clovys Entertainment Channel

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 5 December 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 2015.

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 specialty programming service devoted to urban music (hip-hop, rap, rhythm and blues, soul, reggae), world music (Zouk, Raï, soca, calypso, compa, bossa nova) and Latin music (reggaeton, merengue, salsa, bachata), as well as black culture.
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 (b) Long-form documentary
 - 3 Reporting and actualities
 - 7 (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - 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

4. No less than 65% of all programming broadcast during the broadcast week shall be drawn from categories 8(b) and 8(c).
5. No more than 15% of all programming broadcast during the broadcast week shall be drawn from category 7(d).
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.

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.