



Broadcasting Decision CRTC 2008-362

Ottawa, 22 December 2008

Northwestel Cable Inc.

Whitehorse, Yukon; Yellowknife and Norman Wells, Northwest Territories;
High Level, Alberta; Fort Nelson, British Columbia

Application 2008-0947-8, received 9 July 2008

Public Hearing in the National Capital Region

16 December 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 but which may also include other types of programming such as long form documentary, professional sports, drama, comedy, general entertainment and human interest.*

Introduction

1. The Commission received an application by Northwestel Cable Inc. (NCI) for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve Whitehorse, Yukon; Yellowknife and Norman Wells, Northwest Territories; High Level, Alberta; and Fort Nelson, British Columbia. There were no interventions to this application.
2. NCI is a qualified corporation as defined in *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997, amended by P.C. 1998-1268, 15 July 1998. NCI is ultimately controlled by BCE Inc.
3. NCI indicated that the new VOD service would consist primarily of feature films but may also include other types of programming such as long form documentary, professional sports, drama, comedy, general entertainment and human interest. The applicant confirmed that it would make its VOD program offering available to customers predominantly in the English language.

Commission's analysis and determinations

Service to persons who are deaf or hard of hearing

4. NCI stated that it would provide closed captioning of its VOD programming to serve the needs of viewers who are deaf or hard of hearing. The applicant committed to achieving 100% closed captioning by the end of the sixth year of its licence term.

5. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English- and French-language broadcasters to caption 100% of their programs over the broadcast day, with the exception of advertising and promos, beginning in the first year of the licence term. The Commission also indicated that it is prepared to consider requests to tailor this requirement (e.g., to permit services to ramp up to the 100% requirement over time), only if such a request is supported with specific and detailed evidence, including financial information, that demonstrates that it is impossible for the applicant to meet the 100% captioning requirement.
6. The Commission asked the applicant to provide specific and detailed evidence to demonstrate that it is impossible for its proposed service to meet the 100% captioning requirement in the first year. The applicant did not provide this evidence. Accordingly, the Commission is imposing a **condition of licence**, as set out in the appendix to this decision, requiring NCI to caption 100% of its programs, beginning in the first year of the licence term.

Service to persons with visual impairments

7. NCI also stated that it would make its VOD programming accessible to persons with visual impairments. Visually impaired customers would be able to order the VOD service by telephone. To the greatest extent possible, audio descriptions would be provided for programming that contains textual or graphical information including programming on the barker channel. NCI would endeavour to obtain titles with descriptive video, but did not plan to provide this service on its own. The applicant stated that the annual minimum percentage of titles with described titles would be established based on availability. It further indicated its willingness to accept these levels as a condition of licence once the percentages have been determined.
8. Currently, the Commission expects VOD licensees to provide audio description and video description of programming as well as customer service to respond to the needs of visually impaired customers. In Broadcasting Notice of Public Hearing 2008-8 and Telecom Public Notice 2008-8, the Commission initiated a public proceeding to examine issues related to the accessibility of broadcasting and telecommunications services to persons with disabilities. A decision following the hearing that began 17 November will be rendered at a later date and may result in the Commission imposing additional obligations on some or all broadcasting undertakings.

Conclusion

9. Based on all of the foregoing, 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 Northwestel Cable Inc. for a broadcasting licence to operate a regional video-on-demand programming undertaking to serve Whitehorse, Yellowknife, Norman Wells, High Level and Fort Nelson. The terms and **conditions of licence** are set out in the appendix to this decision.

10. In Broadcasting Public Notice 2008-101, the Commission called for comments on its preliminary determinations on a proposed new regulatory framework for VOD services arising from its review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services (see Broadcasting Public Notice 2008-100). Once the Commission has rendered its decision on the present VOD proceeding, the licensee must submit an application for an amendment to its licence in order to ensure that its terms and conditions of licence are consistent with the new regulatory framework for VOD services.

Employment equity

11. 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

- *Call for comments on a proposed regulatory framework for video-on-demand undertakings* – Notice of consultation – Broadcasting Public Notice CRTC 2008-101, 30 October 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy – Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities* - Notice of consultation - Broadcasting Notice of Public Hearing CRTC 2008-8 and Telecom Public Notice CRTC 2008-8, 10 June 2008
- *A new policy with respect to closed-captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *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 2008-362

Terms, conditions of licence and expectations

Terms

Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve Whitehorse, Yukon; Yellowknife and Norman Wells, Northwest Territories; High Level, Alberta and Fort Nelson, British Columbia

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 22 December 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 the programs in its inventory, 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

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.