



Broadcasting Decision CRTC 2009-123

Route reference:

Broadcasting Notice of Public Hearing 2008-13

Additional references:

2008-13-1, 2008-13-2, 2008-13-3, 2008-13-4

Ottawa, 6 March 2009

Sex-Shop Television Inc.

Across Canada

Application 2008-0892-5, received 26 June 2008

Public Hearing in the National Capital Region

16 December 2008

Vanessa – Category 2 pay television service

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

The application

1. Sex-Shop Television Inc. filed an application for a broadcasting licence to operate a national English-language Category 2 pay television programming undertaking to be known as Vanessa. Its adult programming would be devoted to the themes of charm, sensuality, eroticism and sexuality and might also include documentaries, news and magazines covering the industries that exploit those themes and the personalities that revolve around them. The Commission did not receive any interventions in connection with this application.
2. The applicant indicated that no more than 10% of the programming broadcast during any broadcast week would be drawn from category 7(d) Theatrical feature films aired on television.
3. The applicant also requested authorization to make available for distribution a version of its service in high definition (HD) format for a term of three years, in accordance with the Commission's approach set out in Broadcasting Public Notices 2003-61 and 2006-74.
4. Finally, the applicant noted that some pay or specialty services of a similar nature to Vanessa's are not subject to any conditions of licence relating to closed captioning. Therefore, although the applicant committed to provide closed captioning for 90% of its programming by the end of its first licence term, it requested that this commitment not be translated into a condition of licence.

Commission's analysis and determinations

5. 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 Sex-Shop Television Inc. for a broadcasting licence to operate the national English-language Category 2 pay television programming undertaking Vanessa. The terms and **conditions of licence** are set out in the appendix to this decision.
6. In regard to the applicant's request to offer a version of its service in HD for distribution, the Commission stated in Broadcasting Public Notices 2003-61 and 2006-74 that it would authorize the licensee of a Canadian pay or specialty service to make available an upgraded version of its service for a term of three years. Given the changes to the Commission's approach to HD specialty services announced in Broadcasting Public Notice 2008-100, the Commission is of the view that the shorter three-year authorization is no longer necessary.
7. Accordingly, by condition of licence, Sex-Shop Television Inc. will be authorized to make available for distribution a version of Vanessa in HD format, provided that not less than 95% of the video and audio components of the upgraded and standard definition versions of the service are the same, exclusive of commercial messages and of any part of the service carried on a subsidiary signal. Additionally, all of the programming making up the 5% allowance shall be provided in HD.
8. In regard to the applicant's request for an exception to the 100% closed captioning requirement, as set out in Broadcasting Public Notice 2007-54, the onus is on the applicant to demonstrate a need, financial or otherwise, for the exception. The Commission finds that the applicant provided neither sufficient reasons nor evidence to warrant the requested exception. Therefore, the Commission has imposed a condition of licence requiring the applicant to caption 100% of all programming it broadcasts upon commencement of operations.
9. 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 that it not to be receivable in their home, in either unscrambled or scrambled form.

Secretary General

Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008

- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001

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 2009-123

Terms and conditions of licence for the Category 2 specialty programming undertaking Vanessa

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 6 March 2012. 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 English-language Category 2 pay television programming service devoted to the themes of charm, sensuality, eroticism and sexuality; the programming may also include documentaries, news and magazines on the industries that exploit those themes and the personalities that revolve around them.
3. The programming shall be drawn exclusively from the following categories set out in Schedule I to the *Pay Television Regulations, 1990*, as amended from time to time:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 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
 - (b) Music video clips
 - (c) Music video programs
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 15 Filler programming
4. No more than 10% of all programming broadcast during the broadcast week shall be drawn from category 7(d) Theatrical feature films aired on TV.
 5. In each broadcast year, the licensee shall devote not less than 20% of the broadcast day and not less than 20% of the evening broadcast period to the exhibition of Canadian programs.
 6. 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 22% of the subscription revenues derived from the operation of this service during the previous broadcast year. During 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 or superior to \$150,000.
 - (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 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.
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 review, a preliminary copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.
 8. The licensee is authorized to make available for distribution a version of its service in high definition (HD) format, provided that not less than 95% of the video and audio components of the upgraded and standard definition versions of the service are the same, exclusive of commercial messages and of any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in HD.
 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.
13. The licensee shall adhere to its internal policy on adult programming approved by the Commission. The Commission further expects that any future changes made by the licensee to this policy will be submitted for Commission approval prior to their implementation.

For the purposes of the conditions of this licence, including condition of licence 1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m. or any other period approved by the Commission.