



Broadcasting Decision CRTC 2009-335

Route reference: 2009-36

Ottawa, 9 June 2009

Current Media Canada ULC Across Canada

Application 2008-1471-6, received 29 October 2008
Public Hearing in the National Capital Region
30 March 2009

Current TV – Category 2 specialty service

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

Introduction

1. Current Media Canada ULC filed an application for a broadcasting licence to provide Current TV, a national, English-language Category 2 specialty service that would be devoted to the broadcast of short-form, user-generated content ranging in length from 5 seconds to 30 minutes. The applicant stated that the programming would cover a wide range of topics relevant to young adults.
2. Current Media Canada ULC (the licensee) is owned by CBC Current Media Canada Holdings Inc. (CBC Holdings) (80% voting interest) and by Current Media Canada LLC (Current Canada) (20% voting interest), a non-Canadian corporation. CBC Holdings, the controlling corporation, is wholly owned by the Canadian Broadcasting Corporation.
3. The Commission received one intervention in opposition to this application. However, it is the Commission's determination that the intervention did not address substantive issues that would impact the consideration of this application. The intervention can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

4. By Order in Council P.C. 1997-486, *Direction to the CRTC (Ineligibility of Non-Canadians)*, 8 April 1997 (the Direction), the Governor in Council has issued a direction to the Commission, pursuant to subsection 26(1) of the *Broadcasting Act*, respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted. Pursuant to the Direction, no broadcasting licence may be issued, and no amendment or renewals thereof may be granted, to an applicant that is a "non-Canadian." A "non-Canadian" is a person or entity that is not a "Canadian." A "Canadian" includes a "qualified corporation."

5. The Direction also provides that where the Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control in fact, the applicant is deemed to be a non-Canadian. Therefore, where the Commission determines that a qualifying corporation that would otherwise be a “Canadian” for the purposes of the Direction is in fact controlled by a non-Canadian, the corporation shall be deemed to be a “non-Canadian.”
6. In the present case, the non-Canadian shareholder Current Canada would have:
 - a direct 20% voting interest in the licensee;
 - a 20% representation level on the board of the licensee (1/5 directors); and
 - veto rights over certain decisions of the licensee (through a unanimous consent requirement), which rights are consistent with those customarily provided to minority shareholders.
7. The Commission notes that CBC Holdings and Current Canada will also be parties to other agreements, including a licence agreement and a unanimous shareholders agreement. To properly assess the potential impacts on the control of the proposed service, the Commission has reviewed draft versions of these agreements. The Commission requested certain amendments to ensure that Current Canada does not exercise control or influence over any programming, strategic or day-to-day operational decisions of the proposed service. As set out in the appendix to this decision, the applicant is required to provide executed copies of these governing agreements for final review by the Commission in order to ensure compliance with the Direction.
8. The Commission is satisfied that the application is in conformity with the framework set out in Public Notice 2000-6 and with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission approves the application by Current Media Canada ULC for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking Current TV. The terms and conditions of licence are set out in the appendix to this decision.
9. The Commission notes that the applicant committed to accepting conditions of licence limiting the broadcast of certain program categories in order to ensure that the service will not be nor will become competitive with existing category 1 or analog pay or specialty services. Specifically, the applicant proposed that no more than 15% of all programming broadcast during the broadcast week would be drawn from categories 7(a), 7(b) and 8(c) and that no more than 15% of all programming broadcast during the broadcast quarter would be drawn from category 7(c).

10. The Commission notes that the applicant proposed varying timeframes (i.e. the broadcast week and the broadcast quarter) over which its compliance with these limitations would be measured. However, the Commission considers that it would be appropriate that compliance with these limitations be measured over a broadcast month, as this would provide the applicant with flexibility in scheduling while ensuring that the conditions of licence remain effective in preventing the service from becoming competitive with existing category 1 or analog pay or specialty services. Conditions of licence to this effect are accordingly 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 2009-335

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

Terms

Within 30 days of the issuance of this decision, the applicant must file with the Commission executed copies of the following:

- amended by-laws of the licensee and CBC Holdings;
- unanimous shareholders agreement;
- CBC Services Agreement; and
- licence agreement.

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 9 June 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 specialty programming service devoted to the broadcast of short-form, user-generated content ranging in length from 5 seconds to 30 minutes.
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:

- 1 News
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 5 (b) Informal education/Recreation and leisure
 - 7 (a) Ongoing dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (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
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos
4. No more than 15% of all programming broadcast during the broadcast month shall be drawn from categories 7(a), 7(b) and 8(c) combined.
 5. No more than 15% of all programming broadcast during the broadcast month shall be drawn from category 7(c).
 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 1:

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