



## Broadcasting Decision CRTC 2009-443

Route reference: 2009-94

Ottawa, 24 July 2009

**TVA Group Inc.**  
Across Canada

*Application 2008-1700-2, received 17 December 2008*

### **Prise 2 – Licence amendment**

*The Commission **approves** a request to amend the licence for the French-language specialty television service *Prise 2* in order to add program categories to the list of categories from which it may draw programming. It also **approves** the licensee's request to broadcast additional recent programs from categories 7, 7(d), 8 and 9.*

*The Commission **denies** the licensee's request to reduce from 35 to 30% the minimum level of Canadian content of the broadcast year and of the evening broadcast period.*

### **Introduction**

1. The Commission received an application from TVA Group Inc. (TVA) to amend the broadcasting licence for *Prise 2* (formerly *Nostalgie*), a national French-language Category 2 specialty programming undertaking.
2. TVA requested authority to add program categories 2(b) and 6(a) to the list of categories from which it may draw programming, as set out in item 6 of Schedule I of the Specialty Services Regulations, 1990, as amended from time to time. It also requested permission to broadcast additional recent programs drawn from categories 7, 7(d), 8 and 9. Lastly, TVA requested authority to reduce from 35 to 30% the minimum level of Canadian content of the broadcast year and of the evening broadcast period.
3. The Commission received two interventions opposing the application: one filed by Astral Media Inc. (Astral) and one filed jointly by Association canadienne de production de films et de télévision (ACPFT) and Association des producteurs de films et de télévision du Québec (APFTQ). Astral, ACPFT and APFTQ all opposed the request to reduce *Prise 2*'s Canadian content obligations, but did not oppose the other proposed licence amendments. TVA did not reply to the interventions. The interventions can be found on the Commission's Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca), under "Public Proceedings."

### **Commission's analysis and determination**

#### **Addition of new categories**

4. The licensee stated that it submitted the request to add program categories pursuant to Broadcasting Public Notice 2008-100, in which the Commission stated that it would permit Category 1 services to draw their programming from all program categories, and

that it would do the same for Category 2 services, if it received requests to do so. The licensee stated that it would be prepared to accept a condition of licence requiring it to limit the broadcast of programming drawn from categories 2(b) and 6(a) to 10% of all programming broadcast during the broadcast month. The Commission considers that the addition of these program categories according to the proposed limitations is appropriate, as this amendment is in accordance with the objectives set out in Broadcasting Public Notice 2008-100.

5. The Commission's policy on the licensing of Category 1 and Category 2 analog pay or specialty services is that these services should not compete directly with other analog specialty or Category 1 services airing programs from the same categories.
6. In light of the foregoing, the Commission **approves** the application by TVA Group Inc. to amend the broadcasting licence for the national French-language analog specialty television programming undertaking Prise 2, and adds program categories 2(b) and 6(a), as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time, to the list of categories from which the licensee may draw its programming.
7. Accordingly, the Commission replaces condition of licence number 3, set out in Decision 2005-527, with the following **condition of licence**:
  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
    - 6 (a) Professional sports
    - 7 Drama and comedy
      - (a) Ongoing dramatic 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
    - 14 Infomercials, promotional and corporate videos

8. However, to ensure that this change does not allow Prise 2 to develop into a service that could compete with analog pay, specialty services or Category 1 services, and in accordance with the intent of the new policy set out in Broadcasting Public Notice 2008-100, the Commission imposes the following **condition of licence**:

6. The licensee shall devote not more than 10% of the programming broadcast during the broadcast month to programs drawn from categories 2(a) and 6(b).

#### **Broadcast of more recent programs**

9. TVA requested a reduction in the minimum mandatory period of copyright protection for programs drawn from categories 7, 8 and 9 from 15 to 10 years, and a reduction of such protection for programs from category 7(d) from 25 to 15 years. TVA stated that it had filed this application because it has difficulty finding content that satisfies its current conditions of licence, and to give itself enough flexibility to provide viewers with more attractive programming.
10. The Commission considers that the licensee's request to reduce the waiting period between the creation of programs and their distribution by the service in no way changes the nature of Prise 2, which is to provide programming devoted to television and movie classics. The Commission notes that, in Broadcasting Decision 2005-527, Prise 2's nature of service had been deemed specific enough to prevent direct competition with any analog pay, specialty or existing Category 1 service.
11. In light of the above, the Commission **approves** the application to amend the current condition of licence 4 to allow the broadcast of programs drawn from categories 7, 8 and 9, which must have copyright protection issued at least 10 years prior to the broadcast year. Programs from category 7(d) must have copyright protection issued at least 15 years prior to the year of broadcast. Accordingly, the current condition of licence 4 set out in Broadcasting Decision 2005-527 is replaced by the following **condition of licence**:
  4. All programs drawn from categories 7, 8 and 9 broadcast by the licensee must have copyright protection issued at least 10 years prior to the broadcast year in which they are broadcast. Programs from category 7(d) must have copyright protection issued at least 15 years prior to the year of broadcast.

#### **Reduction of the percentage of Canadian content**

12. The licensee stated that it was applying to reduce the minimum percentage of Canadian content for equity reasons. It states that *Séries+*, an analog specialty service owned by Astral, is only required to broadcast a minimum of 30% Canadian content<sup>1</sup> and that *CINÉPOP*, a pay television service also owned by Astral, is only required to broadcast a minimum of 20%.<sup>2</sup> The licensee stated that the regulatory requirements of its Prise 2 service for Canadian content are greater than those of both Astral services.

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<sup>1</sup> See Broadcasting Decision 2005-444.

<sup>2</sup> See Decision 2000-499.

13. The Commission notes that the regulatory requirements regarding Canadian content for Category 2 services are set out in paragraph 7 of Public Notice 2000-171-1. In that Notice, the Commission stated that in the third year of operation, and in each year thereafter, the licensee shall devote not less than 35% of the broadcast year and of the evening broadcast period to the broadcast of Canadian programs.
14. The Commission is not convinced of the need to make an exception to its policy requiring a minimum of 35 % Canadian content as of the third year of operation for Category 2 services for *Prise 2*. The Commission considers that by authorizing *Prise 2* to reduce the minimum length of copyright for categories 7, 8 and 9 from 15 to 10 years, and for category 7(d) from 25 to 15 years, the licensee should have access to more Canadian production. Accordingly, the Commission **denies** TVA's application to amend condition of licence 7 to reduce the minimum percentage of Canadian content from 35 to 30% of all programming during the broadcast year and during the evening broadcast period.
15. The Commission notes that the general requirements of Category 2 services are much less extensive and restrictive than those of analog or Category 1 services. In particular, Category 2 services have no requirements regarding expenditures on Canadian programming based on a percentage of the service's net annual revenues for the previous year, nor do they have any requirements with respect to the broadcast of first run original Canadian programs.

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
- *Nostalgie – Category 2 specialty service*, Decision CRTC 2005-527, 21 October 2005
- *Séries+ – Licence renewal*, Broadcasting Decision CRTC 2005-444, 31 August 2005

- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- *Cinémania*, Decision CRTC 2000-499, 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>.*