



Broadcasting Decision CRTC 2010-105

Route reference: 2009-632

Additional reference: 2009-632-2

Ottawa, 23 February 2010

City West Cable (North) Corp.

Prince Rupert, British Columbia and the northwest of that province

Application 2009-1098-6, received 30 July 2009

Public Hearing in the National Capital Region

14 December 2009

Video-on-demand service

*The Commission **approves** an application for a broadcasting licence to operate a regional video-on-demand service that will be largely composed of feature films but may also include other types of programming such as drama and comedy, long form documentary, sports and adult programming.*

Introduction

1. City West Cable (North) Corp. filed an application for a broadcasting licence to operate a regional video-on-demand (VOD) programming undertaking to serve Prince Rupert, British Columbia and the northwest of that province. The new VOD service would consist primarily of feature films but could also include other types of programming such as drama and comedy, long form documentary, sports and adult programming. Most of the programming would be in English. There were no interventions to this application.
2. City West Cable (North) Corp., a qualified corporation as defined in the *Direction to the CRTC (Ineligibility of non-Canadians)*, is controlled by its board of directors and is wholly owned by City West and Telephone Corporation.
3. Because VOD services are subject to the *Pay Television Regulations, 1990* (the Regulations), including section 3(2)(d), which prohibits the distribution of programming containing any commercial message, the applicant requested to be authorized by condition of licence, as an exception to sections 3(2)(d) and 4 of the Regulations, to offer on an on-demand basis programming that contains commercial messages where:
 - the messages are already included in a program previously broadcast by a Canadian programming service;
 - the inclusion of these messages as part of the VOD offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcasts the program; and

- the program is offered to subscribers on an on-demand basis at no charge.
4. The applicant confirmed that it would provide closed captioning of its VOD programming to serve the needs of viewers who are deaf or hard of hearing. Specifically, it indicated that it would ensure that 100% of all English-language and French-language titles in its inventory are closed captioned, beginning in the first year of the licence term. The applicant also stated that it would endeavour to provide access to its VOD programming for persons with visual impairments through video description (also known as described video) for the titles offered.

Commission's analysis and determinations

5. 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 City West Cable (North) Corp. for a broadcasting licence to operate a regional video-on-demand programming undertaking to serve Prince Rupert, British Columbia and the northwest of that province. The terms and **conditions of licence** are set out in the appendix to this decision.

Broadcast of commercial messages

6. The Commission has approved a number of applications for amendments to the broadcasting licences of VOD services to permit them to offer programming that includes commercial messages subject to the same criteria as those proposed in the present application. In approving the previous applications, the Commission stated that the proposals "would not represent a significant departure from the Commission's framework for the licensing of VOD undertakings."
7. In light of the above, the Commission **approves** the applicant's request. A **condition of licence** is set out in the appendix authorizing the applicant to distribute programming that contains commercial messages subject to the criteria described above in paragraph 3 of this decision.

Closed captioning

8. 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. Accordingly, the Commission requires the applicant to caption 100% of the programs in its inventory, beginning in the first year of the licence term. A **condition of licence** to that effect is set out in the appendix to this decision.
9. Further, in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated that it intends to require television licensees to abide by certain conditions of licence relating to closed captioning at the time of their next licence renewal. However, as this is a new service, the Commission requires the applicant to fulfill the following conditions immediately:

- to adhere to the quality standards on closed captioning developed by the television industry's working groups, as amended from time to time and approved by the Commission; and
- to implement a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.

Conditions of licence to that effect are set out in the appendix to this decision.

10. In the Accessibility Policy, the Commission also stated that it intends to require television licensees, at the time of their next licence renewal, to ensure that all advertising, sponsorship messages and promos are closed captioned. However, the Commission expects the applicant, upon implementation of its service, to provide viewers with a closed captioned version of all advertising, sponsorship messages and promos offered in its programming, when captions are available.

Described video

11. In the Accessibility Policy, the Commission stated that it would maintain the requirement for those licensees who must currently, by condition of licence, provide described video. The Commission also indicated its intention to consider expanding the types of services that would be subject to such a requirement. The Commission expects services, such as VOD services, not currently subject to a condition of licence regarding described video, to provide described video whenever possible, and to ensure that their customer service responds to the needs of persons with a visual impairment as detailed in the Broadcasting and Telecom Regulatory Policy 2009-430.

Proposed regulatory framework for video-on-demand services

12. 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). Upon completion of the proceeding initiated by that call, the Commission may impose additional requirements on some or all VOD licensees.

Secretary General

Related documents

- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *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
- *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 2010-105

Terms, conditions of licence, expectations and encouragement

Terms

Issuance of the broadcasting licence to operate a regional video-on-demand programming undertaking to serve Prince Rupert, British Columbia and the northwest of that province

The licence will expire 31 August 2016.

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 23 February 2012. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this 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 3(2)(d) pertaining to commercial messages and sections 4(1), 4(2) and 4(3) pertaining to logs and records.
2. The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except where:
 - a) the message was already included in a program previously broadcast by a Canadian programming service;
 - b) the program's inclusion as part of the video-on-demand offering is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service that broadcasts the program; and
 - c) the program is offered to subscribers on an on-demand basis at no charge.
3. 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.
4. Except as authorized by the Commission, the broadcasting undertaking licensed herein shall be operated in fact by the licensee itself.

5. 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.
6. 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:

- d) “gross annual revenues” is the sum of
 - i) 50% of the total revenues received from customers by the broadcasting distribution undertaking(s) for distributing the video-on-demand service, where the video-on-demand service is a “related service”; and
 - ii) all revenues received by the licensee from the broadcasting distribution undertaking(s) distributing the video-on-demand service, where the video-on-demand service is not a “related service”.
 - a) a “related service” is a video-on-demand service in which the broadcasting distribution undertaking that distributes it, or any of its shareholders owns, directly or indirectly, 30% or more of the equity of the video-on-demand service.
7. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channel are Canadian titles.
 8. The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films.
 9. 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.
 10. The licensee shall caption 100% of the English-language and French-language 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.

11. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups as approved by the Commission and amended from time to time.
12. The licensee shall have a monitoring system in place to ensure that closed captioning is included in its broadcast signal and that captioning reaches, in its original form, the distributor of that signal. "Original form" means that, at a minimum, captioning is not dropped, it is passed through (including in high definition), and the correct signal is captioned and broadcast.
13. 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.
14. 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.
15. 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

Program offering in both official languages

The Commission notes that the licensee did not commit to offer any programming in the French language. Nevertheless, the Commission expects the licensee to make its program offering available, to the maximum extent possible, to customers in both official languages.

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 as deemed satisfactory by the Commission. 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 deaf or hard of hearing

When captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all advertising, sponsorship messages and promos offered in its programming.

Service to persons who are blind or whose vision is impaired

The Commission 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 persons with a visual impairment as set out in *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.

In regard to described programming, the Commission expects the licensee to:

- display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
- make information available regarding the described programs that it will broadcast.

Encouragement

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.