



Broadcasting Decision CRTC 2010-116

Route reference: 2009-632

Additional references: 2009-632-1 and 2009-632-2

Ottawa, 26 February 2010

TVA Group Inc.
Across Canada

*Application 2009-0702-4, received 1 May 2009
Public Hearing in the National Capital Region
14 December 2009*

TVA Sports – Category 2 specialty service

*The Commission **approves** an application for a broadcasting licence to operate a new Category 2 specialty programming undertaking and for authorization to make available for distribution a version of its service in high definition format for a term of seven years.*

*The Commission **denies** the applicant's request to amend the definition of "broadcast day."*

Introduction

1. TVA Group Inc. (TVA Group) filed an application for a broadcasting licence to operate a national, French-language Category 2 specialty programming undertaking, TVA Sports. The programming would be devoted to all aspects of sports and, in particular, Canadian mainstream professional sports. The applicant also proposed to make available a version of its service in high definition (HD) format for a term of seven years.
2. TVA Group is a company controlled by Quebecor Media Inc.
3. TVA Group stated that the present application was made pursuant to the issuance of Broadcasting Regulatory Policy 2009-562. It asked to be subject to the standardized conditions of licence for competitive Canadian specialty services operating in the genre of mainstream sports set out in that policy.
4. The applicant proposed to offer programming from all programs categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*.
5. TVA Group also requested an amendment to the definition of "broadcast day" to define it as a 24-hour period.

6. Finally, in an amendment to its application dated 24 September 2009, TVA Group requested that the Commission intervene to ensure that the new service would have the opportunity to acquire broadcast rights for a number of Montréal Canadiens hockey games.
7. The applicant stated that its application was in line with the regulatory framework set out in Broadcasting Public Notice 2008-100, which allows for competition between Canadian specialty services operating in the genre of mainstream sports.
8. The Commission received an intervention in opposition to the application by an individual. TVA Group did not reply to the intervention. The intervention is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

9. After examining the application in light of applicable regulations and policies and considering the intervention received, the Commission considers that the issues to be addressed in its determinations are the following:
 - whether the Commission should intervene in private contractual relations;
 - the appropriate definition of "broadcast day";
 - the implementation of the Commission's Accessibility Policy with respect to competitive Canadian mainstream sports specialty services; and
 - the distribution of an HD version of the proposed service.

Commission intervention in private contractual relations

10. The licensees of sports specialty television services acquire, or are able to acquire, exclusive rights for the broadcast of certain programs, such as the games of certain professional sports teams. TVA Group stated that it was concerned that such agreements for exclusive broadcast might prevent it from acquiring the broadcast rights for Montréal Canadiens hockey games and consequently hinder its ability to establish itself in the market.
11. TVA Group requested that the Commission intervene directly to ensure that TVA Sports would have an opportunity to acquire the broadcast rights for a number of Montréal Canadiens hockey games.
12. With regard to the present application, the Commission is not convinced that it would be appropriate to intervene in existing private contractual relations. Accordingly, the Commission will not intervene with respect to exclusive broadcast rights for Montréal Canadiens hockey games and considers that it is preferable to rely on market forces.

Appropriate definition of “broadcast day”

13. In Broadcasting Regulatory Policy 2009-562, the Commission stated that, for competitive Canadian specialty services operating in the genres of mainstream sports and national news, it would be appropriate to adopt a definition of “broadcast day” that has the same meaning as that set out in section 2 of the *Television Broadcasting Regulations, 1987* (the Regulations), i.e., an 18-hour broadcast day.
14. In this regard, the Commission considers that TVA Group did not provide sufficient arguments in support of its request to be exempted from Broadcasting Regulatory Policy 2009-562. Accordingly, the Commission will require TVA Sports to use the same definition of “broadcast day” as that set out in section 2 of the Regulations.

Implementation of the Accessibility Policy with respect to competitive Canadian mainstream sports specialty services

15. The implementation of the Commission’s determinations relating to the accessibility of services set out in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy) was originally intended to be accomplished through the imposition of conditions of licence and expectations, where appropriate, at the time of licence renewal for existing licensees and as an element of the licensing process for new services.
16. However, in the case of those specialty services operating in the genres of mainstream sports and national news that were opened up to competition among licensed Canadian specialty services, the Commission considers it appropriate to establish standardized conditions of licence concerning the accessibility of programming to ensure that the Accessibility Policy is implemented in an equitable and competitively neutral manner for all new and existing services operating in these competitive genres, consistent with the Commission’s approach for such services announced in Broadcasting Public Notice 2008-100. These **conditions** and expectations are set out in the appendix to this decision.
17. The Commission acknowledges the concerns raised by television broadcasters with respect to the requirement to caption advertising, sponsorship messages and promos, as set out in the Accessibility Policy. Accordingly, the Commission deemed it appropriate to allow some flexibility in this regard and to impose the following condition of licence on new services:

The licensee shall ensure that advertising, sponsorship messages and promos are captioned by no later than the fourth year of the licence term

18. However, to ensure that existing and new services are treated equitably and in a competitively neutral manner, the Commission expects the licensees of services whose licence renewal will be considered in the next two years to begin assessing how they will meet this requirement and will consider imposing a condition of licence at their licence renewal that will take into account the time elapsed since the issuance of this decision.

Distribution of an HD version of the proposed service

19. The Commission considers that the applicant's request for authorization to offer an HD version of its service for distribution beyond a three-year term is consistent with the Commission's approach to HD specialty services set out in Broadcasting Public Notice 2008-100.

Conclusion

20. In light of all of the above, the Commission considers that this application is consistent with the regulatory framework set out in Public Notice 2000-6, as amended by Broadcasting Public Notice 2008-100, and with the applicable terms and conditions set out in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by TVA Group Inc. for a broadcasting licence to operate the national, French-language Category 2 specialty programming undertaking TVA Sports. The terms and **conditions of licence** are set out in the appendix to this decision.
21. The Commission also **approves** the request by TVA Group for authorization to offer an HD version of its service until the end of the licence term. The licensee may offer multiple feeds.
22. The Commission **denies** the request by TVA to amend the definition of "broadcast day."

Reminder

23. The Commission reminds the applicant that distribution of this service is subject to the applicable distribution rules set out in Broadcasting Public Notice 2008-100.

Secretary General

Related documents

- *Conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and national news*, Broadcasting Regulatory Policy CRTC 2009-562, 4 September 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *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 – 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 2010-116

Terms, conditions of licence, expectations and encouragement for the Category 2 specialty programming undertaking TVA Sports

Terms

A licence 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 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 26 February 2013. 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 2016.

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, French-language Category 2 specialty programming service consisting of programming dedicated to all aspects of sports, with an emphasis on mainstream Canadian professional sports. The licensee may offer multiple feeds.
3. Programming may be drawn from all program categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time.
4. The licensee shall devote not more than 10% of all programming broadcast during the broadcast month to programming from each of program categories 7, 7(d), 7(e), 8(b) and 8(c).
5. a) During each broadcast year, the licensee shall devote not less than 60% of the broadcast day and not less than 50% of the evening broadcast period to Canadian programming.

b) The levels set out in subsection 5(a) shall be met on each feed offered by the service.
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 1993-98, 22 June 1993, and in *Additional clarification regarding the reporting of Canadian programming expenditures*, Public Notice CRTC 1993-174, 10 December 1993, 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 50% of the gross revenues derived from the operation of this service during the previous broadcast year.
 - 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 five percent (5%) less than the minimum required expenditure for that year calculated in accordance with this condition; in such a 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 subsections 6(b) and 6(c), 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. a) Subject to subsections 7(b) and 7(c), the licensee shall not distribute more than 12 minutes of advertising material during each clock hour.
- b) Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.

c) In addition to the 12 minutes of advertising material referred to in subsection 7(a), the licensee may broadcast partisan political advertising during an election period.

d) The licensee shall not distribute any advertising material other than national paid advertising.

8. 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.
9. In accordance with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall:
 - ensure that advertising, sponsorship messages and promos are captioned by no later than the fourth year of the licence term;
 - adhere to the quality standards on closed captioning developed by television industry working groups, as amended from time to time and approved by the Commission; and
 - have a monitoring system in place to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal, and this captioning reaches, in its original form, the distributor of that signal. “Original form” means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
10. The licensee shall provide audio description for all the key elements of information programs, including news programming.

For the purposes of this condition of licence, “audio description” refers to announcers reading aloud the textual and graphic information that is displayed on the screen during information programs.

11. 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.
12. 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.

13. The licensee shall adhere to the Canadian Association of Broadcasters' *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

14. The licensee shall adhere to the Canadian Association of Broadcasters' *CAB Violence 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.

For the purposes of the conditions of this licence:

“broadcast day” and “clock hour” shall have the same meaning set out in the *Television Broadcasting Regulations, 1987*;

“broadcast month” means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast days in a month; and

“broadcast year” means the total number of hours devoted by the licensee to broadcasting during the aggregate of the broadcast months in a 12-month period, beginning on 1 September in any year.

Expectations and encouragement

When captions are available, the Commission expects the licensee to provide viewers with a captioned version of all programming aired during the overnight period.

The Commission expects the licensee to acquire and make available described versions of programming, where possible.

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 available to subscribers information regarding the described programs that it will broadcast.

The Commission encourages the licensee to display the standard described video logo and air the audio announcement indicating the presence of described video following each commercial break.