



Broadcasting Decision CRTC 2010-261

Route reference: 2009-461

Additional references: 2009-461-2, 2009-461-3, 2009-461-4

Ottawa, 7 May 2010

High Fidelity HDTV Inc., on behalf of a corporation to be incorporated Across Canada

*Application 2009-0414-5, received 24 February 2009
Public Hearing in the National Capital Region
29 October 2009*

WHD – Category 2 specialty service

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

Introduction

1. High Fidelity HDTV Inc. (High Fidelity), on behalf of a corporation to be incorporated, filed an application for a broadcasting licence to operate WHD, a national, English-language Category 2 high definition (HD) specialty programming undertaking devoted to relationships, lifestyle, beauty, trends and style, and focused on the interests and needs of young working women aged between 18 and 34 years. The Commission did not receive any interventions in connection with this application.
2. The corporation to be incorporated will be wholly owned and controlled by High Fidelity, which is controlled by Mr. John S. Panikkar, Mr. Kenneth B. Murphy, Mr. David T. Patterson, Mr. Paul de Haas, Mr. Gary Townsend, C. A. Bancorp. Inc. and Sentry Select Total Strategy Fund pursuant to the terms of an Amended and Restated Unanimous Shareholders' Agreement dated 13 December 2007. Each individual is Canadian within the meaning of 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.
3. In regard to the programming to be broadcast, the applicant proposed the following:
 - no more than 15% of the programming broadcast in each broadcast year would be drawn from any one of program categories¹ 2(b) Long-form documentary, 7(e) Animated television programs and films, 8(a) Music and dance other than music video programs or clips, 8(b) Music video clips, and 10 Game shows;

¹ The program categories referred to in this decision are set out in Item 6 of Schedule I to the *Specialty Services Regulations*, 1990.

- no more than 25% of the programming broadcast in each broadcast year would be drawn from program category 7(d) Theatrical feature films aired on TV;
- no more than 15% of the programming drawn from program category 11 General entertainment and human interest in each broadcast year would be devoted to programs that are primarily about the world of entertainment and its people, including celebrity profiles; and
- no more than 15% of the programming broadcast during the broadcast year would be drawn from any one of the following programming genres: fashion, health and wellness, food, or home and garden.

Commission's analysis and determinations

4. After examining the application in light of applicable regulations and policies, the Commission considers that the issue to be addressed in its determinations is whether the proposed service would be or become directly competitive with existing Category 1 or analog pay or specialty services.
5. In Broadcasting Public Notice 2008-100, the Commission expressed the view that, in most instances, the narrative descriptions of existing Category 1 and analog pay and speciality services (to be known as Category A services as of 31 August 2011) are sufficiently specific to ensure that these services remain true to the genre for which they were licensed. Consequently, the Commission determined that it would permit all Category A services to draw programming from all program categories, thereby providing these services with greater flexibility. However, to ensure that this change did not permit services to morph into other established programming genres and thus become directly competitive with other Category A services, the Commission established a standard limitation of 10% of the broadcast month for the following categories:
 - 2(b) Long-form documentary;
 - 6(a) Professional sports;
 - 7 Drama and comedy;
 - 7(d) Theatrical feature films aired on television;
 - 7(e) Animated television programs or films; and
 - 8(b) and (c) combined – Music video clips and Music video programs.
6. In Broadcasting Public Notice 2008-100, the Commission stated that it did not intend to apply the above-described general approach to Category 2 services. Instead, it indicated that, in assessing applications for new Category 2 services or applications for amendments to nature of service conditions of licence for such services, it would generally apply the same limitations.
7. The Commission notes that the applicant's proposed programming limitations with respect to program categories 2(b), 7(d), 7(e) and 8(b) are not consistent with the limitations for Category A services set out in Broadcasting Public Notice 2008-100. The

Commission considers, however, that subject to the modifications set out below, the limitations proposed are consistent with program category limitations imposed on similar Category 2 services and are sufficient, in conjunction with the proposed definition of nature of service, to ensure that the proposed service would not be or become directly competitive with existing Category 1 or analog pay or speciality services.

Proposed limitation on the broadcast of music-related programming

8. With respect to the proposed limitation on programming drawn from program category 8(b), in accordance with the approach set out in Broadcasting Public Notice 2008-100 as well as with the approach taken for other Category 2 services licensed since the new policy came into effect, the Commission determines that a 10% limitation, as measured over the broadcast month, is appropriate for WHD.

Proposed limitation on the broadcast of programming from other program categories

9. With respect to the proposed limitations on programming drawn from program categories 2(b), 7(d) and 7(e), the Commission determines that, in accordance with the approach set out in Broadcasting Public Notice 2008-100 as well as with the approach taken for other Category 2 services licensed since the new policy came into effect, the proposed programming limitations (i.e., 15% for program categories 2(b) and 7(e) and 25% for program category 7(d)) are to be measured over the broadcast month.

Conclusion

10. The Commission is satisfied that the application complies 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 High Fidelity HDTV Inc., on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking WHD. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminder

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

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

- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Broadcasting 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 2010-261

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

Terms

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
- 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 7 May 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, English-language Category 2 high definition specialty programming service devoted to relationships, lifestyle, beauty, trends and style, and focus on the interests and needs of young working women aged between 18 and 34 years.
3. The programming shall be drawn exclusively from the following program 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
 - 5 (b) Informal education/Recreation and leisure
 - 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, improvisation, unscripted works, stand-up comedy
 - (g) Other drama
 - 8 (a) Music and dance other than music video programs or clips
 - (b) Music video clips
 - 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 the programming broadcast in each broadcast year shall be drawn from any one of program categories 8(a) and 10.
 5. No more than 15% of the programming broadcast in each broadcast month shall be drawn from any one of program categories 2(b) and 7(e).
 6. No more than 10% of the programming broadcast in each broadcast month shall be drawn from program category 8(b).
 7. No more than 25% of the programming broadcast in each broadcast month shall be drawn from program category 7(d).
 8. No more than 15% of the programming broadcast in each broadcast year drawn from program category 11 shall be devoted to programs that are primarily about the world of entertainment and people, including celebrity profiles.
 9. No more than 15% of the programming broadcast in each broadcast year shall be drawn from any one of the following genres: fashion, health and wellness, food, or home and garden.
 10. 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.
 11. 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 closed captioned by no later than the fourth year of the licence term;
 - adhere to the quality standards on closed captioning developed by the television industry's working groups, as approved by the Commission and as amended from time to time;

- 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; and
- provide audio description for all key elements of information programs, including news programming.

For the purposes of this condition of licence:

“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.

“Audio description” refers to announcers reading aloud the textual and graphic information that is displayed on the screen during information programs.

12. 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* refers to the 24-hour period beginning each day at 6:00 a.m. or any other period approved by the Commission.

Expectations

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

With respect to described programming, the Commission expects the licensee to:

- display a standard 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

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