



Broadcasting Decision CRTC 2010-701

PDF version

Route reference: 2010-146

Ottawa, 22 September 2010

The Ontario Educational Communications Authority Across Canada

Application 2009-1714-8, received 17 December 2009

Public Hearing in Toronto, Ontario

12 May 2010

TVO Kids+ – Category 2 specialty service

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

Introduction

1. The Ontario Educational Communications Authority (TVO) filed an application for a broadcasting licence to provide TVO Kids+, a national, English-language Category 2 specialty programming undertaking that would be devoted to young learners from Junior Kindergarten to Grade 5. The service would provide programming linked to or based on the Learning Expectations set out in the Ontario Curriculum and complementary to the formal in-classroom educational experience of young learners. It would encompass the major areas of the curriculum, including the following: literacy/language, math/problem solving/science and technology, the arts, health education, social studies, and personal and social development/citizenship.
2. In regard to the programming to be broadcast, the applicant proposed that no more than 15% of the broadcast week would be devoted to programming drawn from each of program categories 7(a) Ongoing dramatic series and 7(d) Theatrical feature films aired on TV.¹ It proposed no limit on programming drawn from program category 7(e) Animated television programs and films.
3. TVO stated that a minimum of 50% of the programs broadcast on TVO Kids+ would be Canadian, beginning in the first year of the licence term.
4. It further stated that TVO Kids+ would not broadcast any commercial messages as defined in the *Specialty Television Regulations, 1990* other than sponsorship programming, and noted that all sponsorship programming would be broadcast in

¹ The full list of program categories is set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*.

accordance with TVO's Administrative Guidelines for On-Air Sponsorship (October 2007), as amended from time to time.

5. The Commission received an intervention in support of this application, interventions offering comments from Corus Entertainment Inc. (Corus), Canadians Concerned About Violence in Entertainment (C-CAVE), and TELETOON Canada Inc. (Teletoon), and an intervention in opposition from the Knowledge Network Corporation (Knowledge), British Columbia's public educational broadcaster. The interventions and the applicant's replies can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. After examining the application in light of applicable regulations and policies, and taking into account the interventions received and the applicant's replies, the Commission considers that the issues to be addressed in its determinations are the following:
 - potential competition with existing Category 1 or analog pay or specialty services; and
 - C-CAVE's concerns relating to the broadcast of advertising.

Potential competition with existing Category 1 or analog pay or specialty services

7. In regard to the issue of potential competition with existing Category 1 or analog pay or specialty services, the Commission has considered the following in making its determination:
 - the proposed nature of service; and
 - limitations on program categories.

Proposed nature of service

8. In their interventions, both Corus and Teletoon submitted that there would be a target audience overlap between the proposed service and their own services, TreeHouse TV and TELETOON, respectively, thereby creating potential competition with their services.
9. Knowledge, in its intervention, indicated that TVO Kids+ would duplicate its own children's programming, which would place TVO Kids+ in direct competition for audiences with Knowledge's service known as Knowledge Network, potentially affecting the latter's ability to fundraise. Knowledge also noted the proposal by TVO Kids+ to exhibit programming sourced to a significant degree from the existing TVO Kids programming block (i.e., the children's program schedule on TVO's education television service), which it claimed had over 70% overlap with Knowledge Network's children's programming schedule.

10. In reply, TVO noted that it and Knowledge have co-existed for years in each others' territories with no previous measurable impact on their business models, notwithstanding the overlap of audiences for the children's programming block. TVO further noted that TVO Kids+, as a Category 2 service, would have no assurance of carriage by any broadcasting distribution undertaking and that even if it were to be carried, it would be unlikely that its imprint would be equal to the current distribution of TVO in British Columbia, which is already distributed there via Shaw Direct and Bell TV.
11. TVO further argued that Corus's claim of "target audience" overlap with its service is too broad a criterion with which to measure "competitiveness." While it acknowledged an overlap in ages served (TreeHouse TV: pre-schoolers up to six years of age; TELETOON: children from two to eleven years of age), TVO argued that the focus should be on the specific programming strand, not the target audience. With respect to Corus's TreeHouse TV in particular, TVO submitted that Corus itself had distinguished TreeHouse TV, with its focus on "quality and entertaining programming," from the type of educational programming that would be broadcast on TVO Kids+.
12. The Commission notes that, with respect to any possible competition between TVO Kids+ and Knowledge Network, the former would be entirely targeted towards children, given the proposed nature of service described in paragraph 1 above, whereas the latter is geared to all British Columbians and not only children. The Commission also notes that Knowledge Network, as an educational service, is carried on the basic tier, whereas the proposed TVO Kids+ service would be a Category 2 service, which, if carried, would be on a discretionary tier.
13. The Commission notes Corus's and Teletoon's claims that target audience overlap would create competition between the proposed service and their own services. In this regard, the Commission considers that target audience overlap is not a sufficient criterion for determining competitiveness between services, and that "nature of service" should also be taken into account in determining the potential for competition between services.

Limitations on program categories

14. In its intervention, Corus submitted that the amount of programming drawn from the above-noted subcategories of category 7 for broadcast on the proposed service should be limited to 10%, as set out in Broadcasting Public Notice 2008-100. Teletoon submitted that a 10% limit should be imposed on the service in regard to the broadcast of programming drawn specifically from program category 7(e), in order for the service not to be competitive with its TELETOON service.
15. In its reply to the interventions from Corus and Teletoon, TVO argued that, because children's programming relies to a significant degree on animation programming, the proposed category 7(a), 7(d) and 7(e) limitations would be unduly burdensome, making programming impossible and precluding the applicant from providing a

meaningful and viable service to audiences. TVO added that such limitations are unnecessary because the current program schedules show that there is no program overlap with TELETOON and only three hours of overlap out of a total of 85 hours of programming with TreeHouse TV.

16. 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

17. The Commission also stated that it did not intend to apply the above-described general approach to Category 2 services. However, it did indicate 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.

18. With respect to the applicant's proposed limitations of 15% on programming drawn from each of program categories 7(a) and 7(d) over the broadcast week, the Commission notes that they exceed the 10% limitation over the broadcast month for each of these categories set out in Broadcasting Public Notice 2008-100.

19. In regard to TVO's statement that the programming limitations are unnecessary due to the lack of programming overlap between the proposed service and TELETOON/TreeHouse TV, the Commission notes that there is no assurance that these amounts of programming overlap would not change in the future. However, given that the proposed nature of service for TVO Kids+ is very specific (all content linked to or based on the Learning Expectations set out in the Ontario Curriculum, from Junior Kindergarten to Grade 5), the Commission considers that a 15% limit on programming drawn from each of program categories 7(a) and 7(d), as measured over the broadcast week, is appropriate for the proposed service.

20. With respect to Teletoon's proposed limitation of 10% over the broadcast month for programming drawn from program category 7(e), the Commission considers that,

given TVO Kids+ nature of service and its link to the above-noted Ontario Curriculum Learning Expectations, it is not necessary to impose a limitation on programming from this category. The Commission further notes that the animation genre is essential to the proposed service's target audience.

Determination

21. The Commission determines that the proposed nature of service for TVO Kids+ and the programming limitations described above are sufficient to ensure that the proposed service would not be or become directly competitive with existing Category 1 or analog pay or specialty services. The Commission reminds the applicant that all programming broadcast by TVO Kids+ must be consistent with its nature of service as defined in its conditions of licence.

C-CAVE's concerns relating to the broadcast of advertising

22. C-CAVE, in its intervention, expressed its concern over the content of any possible commercial advertising on the proposed service. Dr. Rose Dyson, Ed. D., President of C-CAVE, outlined some research findings and trends that show the harmful effects of advertising on young viewers.
23. In reply, TVO reiterated that TVO Kids+ would not broadcast any commercial messages, as defined in the *Specialty Television Regulations, 1990*, other than sponsorship programming, and that all sponsorship programming would be broadcast in accordance with TVO's Administrative Guidelines for On-Air Sponsorship (October 2007), as amended from time to time.
24. The Commission notes TVO's clear commitment in regard to the broadcast of commercial messages on TVO Kids+, and has imposed a condition of licence to this effect on TVO Kids+, as set out in the appendix to this decision.

Conclusion

25. 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 The Ontario Educational Communications Authority for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking TVO Kids+. The terms and **conditions of licence** are set out in the appendix to this decision.

Other Matters

Broadcast of Canadian programs

26. The Commission acknowledges the applicant's proposed commitment to broadcast a minimum of 50% Canadian programs beginning in the first year of launch. However, in light of the open-entry, competitive framework set out in Public Notice 2000-171,

Implementation of the Accessibility Policy

27. In Broadcasting Regulatory Policy 2010-355, in accordance with Broadcasting Regulatory Policy 2009-430, the Commission set out standardized conditions of licence concerning accessibility of programming for Category 2 pay and specialty services, which include a condition of licence relating to the captioning of advertising, sponsorship messages and promos. As noted above, the applicant has indicated that it will not broadcast commercial messages other than sponsorship programming. Accordingly, as set out in the appendix to this decision, for TVO Kids+, the Commission has removed the term “advertising” from the standardized condition of licence; this **condition of licence** shall now read as follows:

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

Reminder

28. 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

- *Implementation of the Accessibility Policy with respect to new Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010
- *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
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, as corrected by *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.*

Appendix to Broadcasting Decision CRTC 2010-701

Terms, conditions of licence and encouragement for the Category 2 specialty programming undertaking TVO Kids+

Terms

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 22 September 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 2017.

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 licence will be subject to the conditions set out in *Implementation of the Accessibility Policy with respect to Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010, with the exception of the first bullet of condition of licence number 2, which shall be replaced by the following:

The licensee shall ensure that sponsorship messages and promos are closed captioned by no later than the fourth year of the licence term.
3. The licensee shall provide a national, English-language Category 2 specialty television programming service that will be devoted to young learners from Junior Kindergarten to Grade 5 with programming linked to or based on the Learning Expectations set out in the Ontario Curriculum and complementary to the formal in-classroom educational experience of young learners.
4. The service will not broadcast any commercial messages other than sponsorship programming, and all sponsorship programming shall be broadcast in accordance with the licensee's Administrative Guidelines for On-Air Sponsorship (October 2007), as amended from time to time.

5. The programming shall be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Specialty Television Regulations, 1990*, as amended from time to time:
 - 2 (a) Analysis and interpretation
 - 5 (a) Formal education and pre-school
 - (b) Informal education/Recreation and leisure
 - 7 Drama and comedy
 - (a) Ongoing drama series
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - 9 Variety
 - 11 General entertainment and human interest
 - 12 Interstitials
6. The licensee shall devote not more than 15% of the programming broadcast during the broadcast month to programming drawn from program categories 7(a) and 7(d).
7. The licensee is authorized to make available for distribution an updated version of its service in high definition (HD) format, provided that not less than 95% of the video and audio components of the upgraded and standard definition version of the service are the same, exclusive of the commercial messages and of any part of the service carried on a subsidiary signal. All of the programming making up the 5% allowance shall be provided in HD format.
8. 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.

Encouragement

As set out in *Implementation of the Accessibility Policy with respect to Category 2 pay and specialty services*, Broadcasting Regulatory Policy CRTC 2010-355, 8 June 2010, the Commission encourages licensees to repeat the standard described video logo and audio announcement indicating the presence of described video following each commercial break. The Commission notes that the licensee committed to display the described video logo during the first few seconds of each program containing described video and to air, immediately prior to the broadcast of each such program, the audio announcement indicating the presence of described video. Accordingly, the Commission

encourages the licensee to adhere to these commitments. The Commission further notes that the service will not broadcast commercial messages other than sponsorship programming. Accordingly, the Commission also encourages the licensee to air the audio announcement indicating the presence of described video, after all sponsorship breaks.